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Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 831

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,

THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

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Dated: April 10, 1959

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JURISDICTIONAL STATEMENT

Ford Motor Company, appellant herein, having appealed to this Court from the final judgments of the Supreme Court of Michigan in the above-entitled cases, respectfully shows as follows:

Opinions Below

The opinion of the Supreme Court of Michigan is reported in 355 Mich. 103, and in 94 N. W. 2d 407. A copy of the opinion is annexed as Exhibit A, *infra* p. 29 et seq.

The opinion of the Circuit Court of Wayne County is not reported. A copy is annexed as Exhibit B, *infra* p. 74 et seq.

Jurisdiction

(i) Nature of proceeding and statute involved.

These cases arose upon applications of approximately 10,750 employees in certain of appellant's Michigan plants for unemployment benefits under the provisions of the Michigan Employment Security Act. Their unemployment was due to a stoppage of work in the Michigan plants by reason of a strike at the Canton, Ohio, plant of appellant. The Canton plant is functionally integrated in operation with the Michigan plants.

Section 29(1)(b) of the statute disqualifies claimants for benefits where the unemployment is due to a stoppage of work, existing because of a labor dispute, in the "establishment" in which claimant is employed, provided, however, that no claimant shall be disqualified if he shall establish that he was not "directly involved" in such labor dispute. The Supreme Court of Michigan held that the claimant-appellees were not disqualified and should be paid benefits.

Benefits paid are charged against the employer's "rating account" on the basis of which the amount of tax imposed by the statute upon the employer is determined.

(ii) The appeals are timely.

The judgments of the Supreme Court of Michigan were entered on January 12, 1959. Copies of the judgments are annexed as Exhibits C1 and C2, *infra* p. 124 and p. 125.

Appellant applied for rehearing on February 2, 1959, within the period permitted by the Rules of the Supreme Court of Michigan for the filing of such an application. The State Supreme Court granted a stay of its remittitur pending disposition of the application for rehearing.

The application for rehearing [Appendix, p. 38a] was denied, without opinion, on February 19, 1959 [Appendix, p. 59a].

The Supreme Court of Michigan granted a further stay of its remittitur "for the period of twenty days during which an appeal may be filed with the Supreme Court of the United States and thereafter until that Court passes upon such appeal" [Appendix, p. 60a].

The notice of appeal to this Court was filed in both cases in the Supreme Court of Michigan on February 26, 1959.

(iii) Statutory basis for jurisdiction

The Supreme Court of the United States has jurisdiction of these appeals under the provisions of Section 1257(2) of Title 28, U. S. C.

(iv) Cases sustaining jurisdiction

The decision below necessarily affirmed the validity of the statute. *Dahnke-Walker Co.* v. *Bondurand*, 257 U. S. 282 (1921); the judgments were rendered by the highest court of the State. *Cf. United States* v. *City of Detroit*, 355 U. S. 466 (1958); and the Federal questions were timely presented, *Missouri* v. *Gehner*, 281 U. S. 313 (1930).

The judgments determined the only questions raised in opposition to the payment of unemployment benefits to the claimant-appellees and are thus final for purposes of review. *Clark* v. *Williard*, 292 U. S. 112, 117-18 (1934).

The timely presentation of the federal question is hereinafter demonstrated, *infra*, pp. 14-16.

(v) The statute involved

The provisions of the Michigan Employment Security Act (Title 17, Michigan Statutes) here involved read, in pertinent part, as follows:

> "Sec. 2. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: * * * *Involuntary* unemployment is a subject of general interest and concern which requires action by the legislature * * * The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed *through no fault of their own*, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state. (emphasis added)
>
> * * *
>
> "Sec. 29. (1) An individual shall be *disqualified* for benefits:
>
> "(a) For the duration of his unemployment in all cases where the individual has: (1) Left his work *voluntarily* without good cause attributable to the employer or employing unit, or * * *
>
> "(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a *labor dispute* in the establishment [illegible] which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not *directly involved* in such dispute. For the purpose of this section, no individual shall be deemed to be *directly involved* in a labor dispute unless it is established:
>
> "(1) That, at the time or in the course of a labor dispute in the establishment in which he was

then employed, he shall in concert with 1 or more other employees have *voluntarily* stopped working other than at the direction of his employing unit, or

"(2) That he is *participating* in or *financing* or *directly interested* in the *labor dispute* which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

"(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have *voluntarily* stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

"(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed. (emphasis added)

* * *

"Sec. 17. (a) The commission shall maintain * * * a separate rating account for each employer * * * As used in this act, 'rating account' means an account in the fund showing an employer's experience with respect to contribution payments and benefit charges under this act, determined and recorded in the manner hereinafter provided. * * * Any reference in this act to an employer's 'experience record'

shall be construed to include a reference to his rating account. * * *

* * *

"Sec. 19. (a) * * *

"(2) Each qualified employer's contribution rate for each calendar year shall be determined on the basis of his rating account percentage as of his applicable computation date and the fund balance percentage as of June 30 of the calendar year containing such computation date. Each employer's contribution rate shall be determined from the following table: * * *

* * *

"Sec. 20. (a) Benefits paid shall be charged against the employer's rating account as of the quarter in which such payments are made. * * *"

Sections 18(c), (d) and 19(a)(2) set forth the formula under which the tax of the employer is affected by reason of increase or decrease in payments of benefits to his employees pursuant to the statute.

QUESTIONS PRESENTED

The central issue in these cases is whether employees of appellant company, who were held to be directly involved in a labor dispute causing their unemployment, are disqualified from receiving unemployment benefits. That issue, in turn, depends upon the validity of the classification of employers made by the term "establishment" in the disqualification provision, Section 29(1)(b), as newly construed and applied by the Supreme Court of Michigan.

Ever since 1941, the Supreme Court of Michigan had interpreted the employer's "establishment" as embracing all his plants which are functionally integrated in operation, whether or not situated at a single location. But in the

present cases, the court, in a surprise decision, overruled its long-standing precedents and, for the first time, construed "establishment" so as to cause Section 29(1)(b) to discriminate between (1) an employer whose entire operations are at a single location, and (2) an employer whose functionally integrated operations are in several plants located at different places in Michigan or in Michigan and other states.

The Federal questions presented are:

1. Whether, in the circumstances of these cases, the taxing provisions of the Michigan Employment Security Act, as implemented in their application by Section 29(1)(b), as newly construed and applied, are invalid, under the Equal Protection of the laws Clause in the Fourteenth Amendment, in that the statute thereby makes an arbitrary classification of employers.

2. Whether, in the circumstances of these cases, the said statute as newly construed and applied violates the Commerce Clause in that it imposes an undue burden on commerce.

The circumstances out of which the foregoing emerge as the controlling constitutional questions will more fully appear in the Statement to follow. But at this juncture it is appropriate to point out that a decision that the employees are not disqualified to receive unemployment benefits will have a substantial impact on appellant; for, under the statute, the tax ("contribution rate") on the employer increases with reference to increased benefits paid to his employees.

We also point out—and will develop later—that the decision entails far-reaching industrial consequences, and that the questions under the Federal Constitution are of far-reaching national importance in view of their relation to congressional policies embodied in Acts of Congress.

STATEMENT

Ford Motor Company, the appellant, is a Delaware corporation with its central office and principal manufacturing plants located in the State of Michigan. It is engaged in interstate commerce not only in the sale of motor vehicles in commerce, but also in the transportation of raw materials and work in progress from state to state during the course of its extensive manufacturing and assembly operations which are conducted in various states in units functionally integrated in operation with its Michigan plants.

The Company's labor relations with most of its hourly rated production and maintenance employees are carried on through the International Union, UAW (AFL-CIO) which is the exclusive collective bargaining agent of such employees in all its manufacturing and assembly plants located in Michigan and other states.

Hourly rated production and maintenance employees in all plants of the Company were covered by a Master Contract (between the Company and the International Union) for a 5-year period expiring June 1, 1955. By its terms, the Master Contract was not subject to reopening for modification or change during its period. It provided further that no strike could be called during the term of the agreement except in disputes over production standards, health and safety matters, and rates on new jobs.

Nevertheless, in 1953, in mid term of the Master Contract, the Union made demands upon the Company for revision of the Master Contract. During the controversy that followed such demands, a strike was called at the Company's forge plant at Canton, Ohio, ostensibly over matters falling within the category of permissible strike issues under the Master Contract. Canton was a key plant in the Company's integrated operations, and the strike at Canton resulted in a complete stoppage of the Company's automotive production.

These two related cases arose upon applications of employees of appellant for unemployment benefits under the Michigan Employment Security Act. The claimants were hourly rated production and maintenance employees, covered by the Master Contract with the Union. They were employed in Michigan by appellant at its Mound Road, Highland Park, and Rouge plants. Each of these Michigan plants was functionally integrated in operation with the Canton plant so that the strike at the Canton plant caused a stoppage of work in the Michigan plants. The Union notified its Michigan members to file for unemployment compensation on the theory that they were not disqualified *since the strike was called in another state.* Its underlying theory, of course, was that this point distinguished the prior decisions which had stood as the law of the State since 1941 (*infra*, p 13).

The general objective of the Michigan Employment Security Act, however, is to provide benefits only for those whose unemployment is "involuntary", and to disqualify for benefits any claimant whose unemployment is voluntary or due to a labor dispute in which such claimant is "directly involved".

There is no issue here as to the fact that all the claimants in these two cases were directly involved in the labor dispute which caused their unemployment. The Michigan Employment Security Commission so found (Exs. 9, 10, R. 955b, 959b).* On appeal by claimants, the referee affirmed denial of the claims for unemployment compensation on the ground that, on the evidence before him, claimants were disqualified because directly involved in the labor dispute within the disqualification provision, Section 29(1)(b) of the Act (R. 72b-80b).

Two groups of claimants secured review by the Appeal Board of the Commission. The Appeal Board affirmed the

*Page references followed by "b" are to the Joint Appendix on Appeal in the Supreme Court of Michigan.

decision of the referee. The Board made findings of fact of direct involvement of the claimants leading to disqualification under the Act. The Board said (Appendix 24a):

> "Based upon the testimony above quoted and the entire record, we find that because of the negotiations arising out of grievances and demands made by the International Union not only in the Canton Plant but in other units as well and on behalf of its entire membership, resulting in a general modification of the 1950 contract, namely the supplemental contract of May 25, 1953, the claimants herein were benefited thereby, and as a result thereof were directly interested within the meaning of the Act, and that the claimants are disqualified from receiving benefits for the weeks in question."

On appeal to the Circuit Court of Wayne County, the Appeal Board's findings of fact were sustained. The Circuit Court said (Exhibit B, *infra*, p. 99):

> "Therefore, viewing the decision of the Appeal Board in the light of the governing statutes and the authority of the court of review under M. S. A. 17.540, Section 38, supra, the court is of opinion and so finds, that the findings of fact of the Appeal Board in the cases properly before the court, are well-supported by the greater weight of the evidence, and that such decision of the said Appeal Board is not contrary to the great weight of the evidence. Therefore, the decision of the Appeal Board is affirmed."

The Appeal Board, in dealing with the Union's position that "employees laid off in the State of Michigan because of a lack of work due to a labor dispute in *another** state are entitled to unemployment compensation benefits", made the point (Appendix pp. 9a-10a) that under Michigan law the

*Emphasis added.

answer turned not upon the question of state lines, but rather upon the issue whether the Michigan plants were functionally integrated with the Canton, Ohio plant within the *Chrysler* case (*Chrysler Corporation* v. *Smith*, 297 Mich. 438, 298 N. W. 87 (1941)). The Appeal Board said (Appendix p. 10a):

> "We believe that the basic issue is one of functional integration.
>
> "Except for the fact that a state line is involved in this case we can see no distinction whatever between the facts existing here and the facts in *Chrysler Corporation* v. *Calvin N. Smith, et al*, 297 Mich. 438. * * *"

After reviewing the evidence, the Circuit Court affirmed the finding of the Appeal Board that the Canton, Ohio, and Michigan plants were functionally integrated operations of appellant within the meaning of the *Chrysler* case (Exhibit B, p. 87-88, *infra*):

> "It is but stating the obvious, and in this the company is not unique, that the Ford Motor Company is, functionally, a highly integrated extensive industrial enterprise or establishment, of which the forge plant at Canton, Ohio, is as much an integral part as any of its plants in Detroit or elsewhere in Michigan.
>
> "It is equally obvious that the International Union UAW-CIO is a highly integrated, comprehensive Union, of which the Canton, Ohio, forge plant local Union is as much a part as any of the like plant-unions in Michigan * * *
>
> "To approach the question of the Ford Motor Company enterprise, or the International Union, in its comprehensive interstate organization, from the point of view that such organizations, in the application of their benefits and burdens, stop at state boundary lines is, in my opinion, to do violence to

> the plan and purpose of the Michigan Employment Security Act, as such purpose is set forth in the aforementioned declaration of policy, M. S. A. 17.502. * * *"

The Circuit Court pointed out that it was neither reasonable nor realistic to hold that the "economic circulatory system of a highly integrated industry such as the Ford Motor Company, is, for the purpose of carrying out the applicable terms of the Michigan Employment Security Act, obstructed by state boundary lines. The same may be said of the International UAW-CIO" (Exhibit B, p. 88 *infra*).

The Circuit Court accordingly concluded that the Canton plant, as well as the Michigan plants, were included in appellant's "establishment" within the meaning of the statute (Exhibit B, pp. 89-90 *infra*):

> "* * * the court is of opinion and so finds, that the term 'establishment' as used in the Michigan Employment Security Act is not confined to the state lines of Michigan; that, more specifically, in the cases at bar, the term 'establishment' comprehends the Michigan plants, supra, where the claimants were employed and the Canton, Ohio, forge plant where the strike compelling the stoppage of work at the Michigan plants, occurred; * * *"

The Supreme Court of Michigan did not disturb the findings of fact of the Appeal Board (1) that the claimants were directly involved in the labor dispute which caused their unemployment, and (2) that the Canton, Ohio, plant and the Company's plants within Michigan were functionally integrated in fact. Instead, the reversal was on a question of law concerning the interpretation of the statute. Reversal was on the ground that, to the extent that the *Chrysler* case adopted "integral functioning" as the basic test for determining the scope of "establishment", as used in the statute, the *Chrysler* case "is overruled".

Seventeen years earlier, the Supreme Court of the State of Michigan in the *Chrysler* case had laid down functional integration in operation as the test for determination of the question whether plants at different locations were nevertheless in the same "establishment" within the disqualification section of the Act. Until its unexpected overruling here, the *Chrysler* decision had been universally accepted and uniformly followed as the law of the State. See *Chrysler* v. *Appeal Board*, 301 Mich. 351, 3 N. W. 2d 302 (1942); *General Motors Corporation* v. *Unemployment Compensation Commission*, 321 Mich. 724, 34 N. W. 2d 497 (1948); *Clapp* v. *Appeal Board*, 325 Mich. 212, 38 N. W. 2d 325 (1949); *Buzza* v. *Unemployment Compensation Commission*, 330 Mich. 223, 47 N. W. 2d 11 (1951); *Ormiston et al.* v. *Appeal Board, etc. et al.*, Circuit Court, Dickinson County (No. 4159), December 13, 1951.

The *Chrysler* decision having stood as the established law of the State since 1941, the appellant had no reason to anticipate that the *Chrysler* precedent would be overruled here. The issue, as pointed out by the Appeal Board, *supra*, was simply whether the functional integration concept of that case should be applied to integration across the state line. And, in this connection, appellant, as appellee below, pointed out in its brief the grave questions which would arise under the Commerce and Equal Protection clauses of the Federal Constitution if the *Chrysler* concepts were not so applied across state lines (Appendix pp. 29a-37a).

Nevertheless, the Supreme Court of Michigan unexpectedly overruled the *Chrysler* case and appellant applied for a rehearing. In its application for rehearing, appellant not only recalled to the attention of the State Supreme Court the constitutional questions theretofore potentially present in the case, but also presented the constitutional issues which for the first time arose because of the new and unexpected interpretation given to the statute by the court.

Timely Presentation of Constitutional Questions

The constitutional questions were duly presented to the Supreme Court of Michigan at the first opportunity and were necessarily decided by that court. This is evident from the facts and the record.

No Federal right or claim of right of appellant had been infringed prior to the decision of the State Supreme Court. The Michigan Employment Security Commission, the Referee, the Appeal Board, and the Circuit Court, successively, had sustained appellant's construction of the statute.

The objections upon Federal grounds presented by the application for rehearing (Appendix pp. 38a-56a) could not have been made until after the decision of the State Supreme Court. The application for rehearing therefore presented the first opportunity for raising such questions. Justice Cardozo's analysis in *Great Northern Ry. Co.* v. *Sunburst Oil & Refining Co.*, 287 U. S. 358 (1932) is controlling here (pp. 366-67):

> "* * * The rule, general as it is, does not * * * apply where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a federal right. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 378; *Missouri ex rel Missouri Insurance Co.* v. *Gehner*, 281 U. S. 313, 320; *American Surety Co.* v. *Baldwin, supra* [287 U. S. 156]. This case is clearly within the second of these exceptions * * * We have seen that the assault upon the judgment is made along two lines. * * * The second is a challenge to the constitutional validity of the ruling in this case whereby the statute is adjudged to mean one thing for some cases and another thing for others. This latter objection the petitioner could not make in advance of the event [i.e., decision of the State Supreme Court under review]."

So, here, the specific objections that the new construction of the statute, as given for the first time by the decision of the State Supreme Court overruling the *Chrysler* case, rendered the statute invalid under the Federal Constitution, were objections that could not have been made in advance of that decision.

Thus, the *Chrysler* doctrine had been that the scope of the "establishment" was measured by the extent of the functional integration in fact. On that basis, the only potential Federal question reasonably foreseeable were those that would arise in the event the State Supreme Court should reverse on the ground that the integration test of the *Chrysler* case did not extend beyond state lines. The constitutional implications which might have arisen upon failure to extend the *Chrysler* concept across state lines were pointed out by appellant (as appellee) in its brief in the State Supreme Court (Appendix, pp. 29a-37a). And, in their opposition to the application for rehearing in the State Supreme Court, the plaintiffs in effect conceded that the overruling of the *Chrysler* case had "occurred after due consideration" of at least the constitutional implications pointed out by appellant's brief in the State Supreme Court. (Appendix 29a-37a). There is thus in the record what, in the apt words of Justice Cardozo in the *Great Northern* case, *supra*, (287 U. S. at p. 366) "is in essence the stipulation of counsel followed by acquiescence of the court", which would have been sufficient basis for the jurisdiction of this court had the decision below simply refused to extend the Chrysler doctrine across state lines.

But upon the unexpected overruling of the *Chrysler* integration test, and the substitution therefor of a concept of "establishment" which was predicated upon a classification of employers according to whether their operations were (1) at a single location, or (2) in several plants at different locations, there arose for the first time the occasion for the Federal objections which were thereupon made

on the basis of the discrimination resulting from that new classification of employers. The classification was arbitrary because it bore no relation to disqualification of claimants on the ground of direct involvement in the labor dispute causing their unemployment.

The petition for rehearing presented the first opportunity for raising the Federal objections on this ground because the Michigan Employment Security Act made no such arbitary classification of employers prior to the novel interpretation given to it by the decision of the State Supreme Court. This is sufficient to sustain jurisdiction. In *Missouri* v. *Gehner*, 281 U. S. 313 (1930), jurisdiction on appeal from the decision of a state supreme court was sustained on the basis of Federal questions arising upon that decision and raised for the first time in a petition for rehearing which was denied.

The facts that the *Chrysler* test had stood as the established law of the State since 1941, and that appellant's interpretation had been sustained at every stage until the decision of the State Supreme Court, distinguishes *Herndon* v. *Georgia*, 295 U. S. 441 (1935), and brings the appeals here within the recognized rule as stated in that case (p. 444):

> "* * * There is no doubt that the federal claim was timely if the ruling of the state court could not have been anticipated and a petition for rehearing presented the first opportunity for raising it. *Saunders* v. *Shaw*, 244 U. S. 317, 320; *Ohio* v. *Akron Park District*, 281 U. S. 74, 79; * * * *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 677-678; *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 164 * * *"

THE QUESTIONS ARE SUBSTANTIAL

The Equal Protection Clause

It is clear from the declaration of policy, set forth in Section 2 of the Michigan Employment Security Act, that the statute purports to remedy only *involuntary unem-*

ployment. Disqualification for benefits for *voluntary* unemployment is dealt with in Section 29. The provision here drawn in question, Section 29(1)(b), relates to disqualification for benefits where an employee is directly involved in a labor dispute which has caused his unemployment.

As now construed by the Supreme Court of Michigan, however, the basic disqualification under the statute turns not upon the employee's direct involvement in fact, but rather upon the location of the employer's integrated operations.

If the employer's functionally integrated units are all at the same location, then direct involvement in the labor dispute causing a stoppage of claimants' work is a ground for disqualification. In consequence of such disqualification, the unemployment does not result in any increase in the employer's contribution rate because no benefits are payable.

But if, perchance, claimants' employment is at a location different from the plant at which the strike occurs, then direct involvement in fact by claimant in such labor dispute is not a ground for disqualification, and, in consequence, benefits are payable to such claimant with resultant increase in the employer's contribution rate.

Obviously, disqualification by reason of direct involvement in fact in the labor dispute causing unemployment should turn upon the individual's involvement rather than upon any fortuitous location of his employer's functionally integrated units. Whether functionally integrated units are in one plant at a single location, or in different plants at different locations, has no reasonable relation to an employee's actual direct involvement in the labor dispute causing his unemployment.

Thus, the attempted classification of employers, with resultant discrimination both in taxation and labor relations, rests upon a difference which has neither a fair nor substantial relation to the object of the disqualification

clause. The classification is therefore arbitrary and invalid under the Equal Protection Clause of the Federal Constitution. *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison*, 301 U. S. 459 (1937); *Morey* v. *Doud*, 354 U. S. 457 (1957). The controlling principles were recently stated in *Allied Stores of Ohio* v. *Bowers*, (No. 10, Oct. Term 1958, February 24, 1959):

> "But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.' *Royster Guano Co.* v. *Virginia*, 253 U. S. 415; * * *"

The subsections of Section 29(1)(b) define the conduct constituting the direct involvement in a labor dispute by a claimant which disqualifies him from unemployment benefits. It is evident on the face of these subsections that the proximity in location of the functionally integrated units is utterly irrelevant to the direct involvement in a labor dispute which is the ground for disqualification.

Thus, subsection (2) provides that an employee shall be deemed "directly involved" in a labor dispute where it is established:

> "(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, * * *".

Obviously, if in fact a claimant is "financing" a labor dispute which has caused the stoppage of his work, it is quite irrelevant whether or not his unit of employment is under the same roof as the unit in which the strike occurs.

The financial assistance is identical wherever the two units may be located with reference to each other. Therefore, the classification which distinguishes between such "financing" according to whether or not the labor dispute occurs under one roof or another, with consequent disparate tax treatment, is arbitrary and capricious.

This self-evident conclusion under subsection (2) is confirmed by reference to subsection (3) which makes clear that whether the unit of employment is at the same location as the unit where the strike occurs is quite irrelevant to the acts defined as direct involvement:

> "(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, * * *"

Manifestly, the voluntary character of unemployment where the employee "voluntarily" stops working is identical whether the employee happens to be employed in the same plant at which a strike occurs or is employed at a different location. Therefore, the classification which distinguishes between such voluntary stoppage of work according to whether or not the labor dispute occurs under one roof or another, with consequent disparate tax treatment, is arbitrary and capricious.

It follows that the classification of employers, for the purpose of disqualification for unemployment benefits of employees whose stoppage of work was due to a labor dispute in which they were directly involved, on the basis of whether such employer's functionally integrated operations were all at one location or at different locations, is arbitrary and capricious and therefore invalid under the Equal Protection Clause.

There are still other untoward consequences of the arbitrary and capricious classification. Such classification enables the employees, through their Union, to force the employer to pay what are in effect strike benefits in connection with a company-wide labor dispute. The device open to the Union is plain; it is the one here employed: strike one key unit and collect unemployment benefits in all the other units which are closed down because functionally integrated in operations with the unit that is struck. The present cases supply a perfect illustration: the Union opened up a broad dispute in the course of which it struck a plant in Ohio with resulting unemployment and claims for benefits in Michigan. The situation now appears to be that, while for purposes of the Union in applying economic pressure on the employer the separate units are in fact all parts of a single integrated establishment, nevertheless, for purposes of the State in fixing ultimate costs of "unemployment" strike benefits upon the employer, those units must as a matter of law be treated as separate establishments. Such a result, the appellant contends, violates another basic constitutional requirement—that of fair play which is commonly attributed to due process, but which is also embodied in the overlap of due process with equal protection. [The overlap is indicated in *Truax* v. *Corrigan*, 257 U. S. 312 (1921), and illustrated in *Bolling* v. *Sharpe*, 347 U. S. 497 (1954).] To the extent of this overlap, due process is within the ambit of appellant's equal protection objection.

The Commerce Clause

The discrimination made in this case (i.e., between [1] a single "establishment" at one location and [2] functionally integrated operations in plants at different locations) not only infringes the equal protection of the laws clause in respect of functionally integrated operations at different locations *within* the State of Michigan, but also infringes the Commerce Clause by imposing an undue burden upon

interstate commerce where, as here, the labor dispute occurs in a plant outside the State. The undue burden upon commerce is three-fold:

First, an employer, with functionally integrated plants located in Michigan and other states, is excluded from equal treatment in the determination of his unemployment compensation tax where the stoppage of work in his Michigan plant is due to a labor dispute in his plant outside the state and where his Michigan employees claiming benefits are directly involved in such dispute.

Second, the practical result of the discrimination is that organized employees engaged in a common labor dispute are thereby enabled to finance such dispute against the multiplant employer, out of funds to which the employer must, as a result, pay higher contributions, by purposely striking any one of his key plants located outside the State of Michigan so as to collect unemployment benefits for employees within the State of Michigan whose unemployment is due to a stoppage of work by reason of the strike at the key plant outside the State.

Third, such burdens are prohibitive of commerce because they can be avoided only by abandonment of that commerce through (1) discontinuation of the functionally integrated operations outside the State, so as to eliminate interstate transportation of raw materials and work in progress between functionally integrated plants in different states, and (2) moving all such operations to a single location within the State in order to come within the arbitrary classification of the Michigan Employment Security Act.

That the arbitrary classification also discriminates against employers with functionally integrated operations at different locations wholly within the State, as well as against employers whose functionally integrated operations extend across state lines, does not avoid the Commerce Clause question. Manifestly, an undue burden upon inter-

state commerce cannot be justified by the imposition of a like undue burden upon local commerce. *West Point Wholesale Grocery Co.* v. *Opelika*, 354 U. S. 390 (1957) (reversing 38 Ala. App. 444, 87 So. 2d 661, which held to the contrary on this point).

In *Dean Milk Company* v. *City of Madison, Wisconsin*, 340 U. S. 349 (1951), on appeal from the Supreme Court of Wisconsin, the Supreme Court of the United States held invalid a municipal milk ordinance which made a differentiation between pasteurization plants located within five miles of the city and those located beyond the 5-mile limit. It prohibited sale of pasteurized milk within the city unless it had been processed and bottled at an approved plant within the 5-mile limit. In an action by a distributor of milk gathered from both Wisconsin and Illinois, but pasteurized in Illinois at places 65 and 85 miles from Madison, the Supreme Court of Wisconsin had held that there was no violation either of the Fourteenth Amendment or of the Commerce Clause of the Federal Constitution. The State Supreme Court said (257 Misc. 308, 43 N. W. 2d 480, 483):

> "* * * The five-mile limitation as to pasteurization plants is reasonable as applied to this plaintiff. It has no pasteurization plant within any reasonable distance of Madison. This provision of the ordinance was not adopted to exclude plaintiff, nor does it discriminate against it."

In the Supreme Court of the United States, the City of Madison, as appellee, argued in its brief that the ordinance was neither designed to, nor did it operate to, discriminate against interstate commerce in any way; all persons, whether doing business interstate or intrastate, were equally subject to the city ordinance.

Despite the fact that the ordinance treated interstate and intrastate operators alike, the Supreme Court of the

United States reversed the State Supreme Court and held that the ordinance imposed an undue burden on interstate commerce. Obviously, the 5-mile limitation was an arbitrary discrimination for the reason that whether a pasteurizing plant was located over five miles from the city bore no relation to the wholesomeness of the milk pasteurized by appellant in Illinois. The Court held that the ordinance imposed an undue burden on commerce.

The Supreme Court held that the "discrimination" inherent in the ordinance (p. 354) imposed an undue burden upon commerce (p. 356):

> "To permit Madison to adopt a regulation not essential for the protection of local health interests and placing a discriminatory burden on interstate commerce would invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause."

Thus, to come within the arbitrary classification of the Madison ordinance, the Dean Milk Company would have been obliged to build a pasteurization plant within the 5-mile limit and abandon the interstate shipment from its Illinois plant.

So, here, to come within the arbitrary classification of the Michigan Employment Security Act, appellant would be obliged to move all its functionally integrated operations to a single location within the State, abandon its integrated operations outside the State, and in consequence discontinue interstate transportation of raw materials and work in progress from integrated plants located outside the State.

Thus, the abandonment of commerce required to come within the arbitrary classification of the Michigan statute is essentially analogous to that demanded by the Madison ordinance which was held invalid in the *Dean Milk Co.* case.

While of course the states have a large freedom in the fostering of home industries, they cannot do so at the expense of national interests. The *Dean Milk Co.* case illustrates the care with which the Supreme Court examines state statutes in order to determine whether they involve, either by design or in result, discrimination against commerce. But the *Dean Milk* case is only one among the many Commerce Clause decisions, taken in the silence of Congress, that have helped bind the states together in a smoothly working Federal system.

Related Federal Statutes

On the subject of unemployment compensation, however, the Congress has not been silent. The Social Security Act (49 Stat. 620), and the Wagner-Peyser Act (48 Stat. 113), together provided for a national employment system, the cost of the administration of which is paid by the Federal Government. The nation-wide coverage is implemented by coordinated state statutes, of which the Michigan Employment Security Act is one.

In so far as these coordinated state statutes may touch upon commerce, they are dependent for their validity solely upon an express Federal sanction. And in the granting of permission to the states to lay a tax upon employment in commerce, the Congress laid down a national policy against discrimination among employers which pre-empted the field, and thereby precluded use of the Federal permit to implement any policy of the state to differentiate between employers by a discrimination which burdens commerce.

The "Social Security Act Amendments of 1939" (53 Stat. 1360)* (which contains the Federal enabling act)

*The Act also imposed a Federal excise tax upon employers of 3% of total wages, but with a credit up to 90% on account of contributions to state unemployment funds, and any savings on the State

permitted collection of unemployment fund payments by the states not only from (a) employers engaged in commerce, but also from (b) Federal instrumentalities. It is clear, however, that such permission was given in expectation that the states would not discriminate among employers.

The Federal permit to collect unemployment benefit taxes from employers engaged in commerce was in the form of a limited withdrawal of an employer's right to rely upon the Commerce Clause for relief from such taxes simply because he was engaged in commerce, or because the statute did not distinguish between interstate and intrastate commerce. (53 Stat. 1391, 26 U. S. C. § 3305(a)):

> "(a) Interstate and foreign commerce. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does *not* distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce." (emphasis added)

But a state taxing statute which discriminates against employers engaged in functionally integrated operations extending across state lines, and places an undue burden upon commerce, would not fall within the foregoing Federal permit. This conclusion is supported by the congressional policy against discrimination which is even more clearly revealed in the next paragraph of the enabling act which deals with Federal instrumentalities.

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tax under an improved rating experience plan. The payment of the benefits in question here would result in a higher tax rate being levied against appellant under the State law than would be the case if its plants were not separated geographically. Hence the federal credit provision is significant here only in emphasizing the national importance of questions of substance as to the validity of a state unemployment compensation statute under the Equal Protection and Commerce Clauses.

The authority to collect unemployment fund payments from Federal instrumentalities was in the form of a grant of permission, but only to the extent that the state did not indulge in specified discrimination (53 Stat. 1392, 26 U. S. C. § 3305(b)):

> "(b) Federal instrumentalities in general. The legislature of any State may require any instrumentality of the United States * * * [with specified exceptions] to make contributions to an unemployment fund * * * The permission granted * * * shall apply (1) only to the extent that *no discrimination* is made against such instrumentality so that if the rate of contribution is uniform upon all other persons subject to such law * * * the contributions required of such instrumentality * * * shall not be at a greater rate than is required of such other persons * * *, and if the rates are determined separately for *different* persons or *classes* of persons having individuals in their employ * * * the *determination* shall be based *solely* upon unemployment experience and *other factors* bearing a *direct relation* to unemployment risk * * *" (emphasis added).

The classification made by the Michigan Employment Security Act, as here construed, between single and multiple plant employers is a determination *not* based solely upon "factors bearing a direct relation to unemployment risk" as required by the foregoing paragraph (b) of the Federal enabling act in reference to the taxing of Federal instrumentalities as employers.

If the appellant here were a Federal instrumentality, clearly the Michigan statute would be invalid as against it because no permission was granted under paragraph (b) of the Federal enabling act to impose any such discriminatory tax against a Federal instrumentality.

The statute is similarly invalid as against appellant for the reason that the permission under paragraph (a), to lay a tax upon employment in commerce, was also subject to the

condition that such tax shall be non-discriminatory, and impose no undue burden upon commerce. This conclusion follows from two considerations.

First, the condition in (b) to the effect that the tax rate determination be based solely on factors directly related to unemployment risk, while used in specific reference to Federal instrumentalities, nevertheless must be taken as reflecting a standard established by Congress for equality of treatment to be used in implementing the congressional policy against discrimination against employers engaged in commerce.

Second, we cannot impute to Congress an intention under (b) to withdraw Federal instrumentalities from the reach of certain state discriminations, while at the same time to grant permission under (a) to subject employers in commerce to the same kind of discrimination.

Accordingly, the inhibitions of the Commerce Clause, being specifically lifted under (a) only to the extent of non-discriminatory equal treatment, remain effective to prohibit discriminatory tax burdens upon commerce.

Far-Reaching National Importance of Questions Presented

For the purposes of the jurisdictional statement, however, the foregoing considerations need only be pursued to the extent of demonstrating that the Federal questions presented are substantial, of far-reaching general importance, and require plenary consideration, with briefs on the merits and oral argument, for their resolution. This is evident from the following considerations: (1) the validity of a state taxing statute has been drawn in question under the Equal Protection and Commerce Clauses; (2) the state taxing statute involved comprises an integral part of a federal-state system for unemployment compensation and,

in so far as the tax is laid upon the privilege of employing workers in commerce, it rests for its validity upon specific congressional permission. These questions combine to make up a major problem of federalism. The Federal phase is particularly noticeable with regard to the relationships between the Nation and the States under their respective statutes for effecting the Federal-State system for unemployment compensation. In the solution of that problem the congressional policy as manifested in the Federal statutes reenforces the constitutional considerations which underlie the Equal Protection Clause and the Commerce Clause as instruments of federalism.

CONCLUSION

It is respectfully submitted that this Court has jurisdiction of the within appeals and the questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

Respectfully submitted,

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Dated: April 10, 1959

Filed Jan 12 1959

Exhibit A

STATE OF MICHIGAN

SUPREME COURT

APRIL TERM, 1958

ALEXANDER PARK, *et al.*,
Plaintiffs and Appellants,
THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellant,
v.
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendant and Appellee,
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendant and Appellee,
FORD MOTOR COMPANY,
Defendant and Appellee.

JOHN L. DORSEY, *et al.*,
Plaintiffs and Appellants,
v.
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendant and Appellee,
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendant and Appellee,
FORD MOTOR COMPANY,
Defendant and Appellee.

BEFORE THE ENTIRE BENCH, Except Kavanagh, J.

Exhibit A

Edwards, J.

These cases are of great financial importance to the litigants. Yet, after a careful review of over 1,600 printed pages of records and briefs, we conclude that they turn upon the answer to a relatively simple legal question—Does the term "the establishment," as used in the Michigan employment security act, encompass both Ford plants in the vicinity of Detroit, Michigan, and the Ford forge plant at Canton, Ohio, for the reason that the former cannot operate long without the latter?

The question is by no means new. In very similar form, it has previously been submitted to the judicial systems of 9 States, each of which had at the time statutory language of like import to that of our State to construe.

The appellate courts in Massachusetts, New Jersey, Minnesota, Kentucky, New York, Virginia, and Pennsylvania answered the question in the negative. Georgia's supreme court alone answered affirmatively. In the 9th State, Texas, where compensation claims were allowed under a similar situation and somewhat similar statutory language, the present defendant stipulated to dismissal of its appeal—perhaps in anticipation of a legislative amendment favorable to its position, which did indeed follow.

For reasons which we detail hereafter, we arrive at the same conclusion reached by the great majority of the courts which have considered the problem. Although, as we will note, much more is in dispute between these parties, in the end this decides the principal question in these cases.

We have before us 2 cases involving separate groups of claimants of unemployment compensation, totaling approximately 11,000 such claims in all. The claimants in these cases,* in May of 1953, were employed at 3 plants

*All claims were consolidated for hearing and appeal in these cases under terms of the statute, CL 1948, § 608.1 (Stat Ann § 27.591).

Exhibit A

of the Ford Motor Company in the vicinity of Detroit, Michigan. The 3 plants involved were the Mound Road plant, the Highland Park plant, and the Ford Rouge plant at Dearborn. The employees who are claimants in these appeals were laid off from the 3 plants just referred to as a result of the failure of forgings, essential to the operation of their particular departments, to arrive at the plant concerned as a result of the stoppage of manufacture of such forgings at the Canton forge plant due to a strike called by the UAW-CIO on April 20, 1953, at the Canton plant.

In the lengthy record which contains much hotly-disputed testimony, 2 facts appear to be clear and beyond dispute: 1) that the employees concerned were laid off either as a direct or indirect result of the failure of forgings previously manufactured at the Canton forge plant to arrive at departments or plants where they would customarily be incorporated into subassemblies and assemblies of Ford products; 2) that no strike vote, call, walkout, or picketing occurred in any of the 3 plants under consideration, and that all employees concerned continued work until laid off by the company (indeed some of them returned to work on call during the period of the Canton forge plant strike), and that other union employees, whose operations were not affected by the lack of forgings, continued work in each of the 3 plants through most or all of the entire Canton strike period.

The Ford Motor Company is a Delaware corporation, with its principal office and principal manufacturing plants located in Michigan. It has extensive manufacturing assembly plants in many other States, and this record indicates that all of the plants are integrated in operation with its Michigan plants.

Exhibit A

The union with which we are concerned in these cases is the International Union UAW-CIO which, during the period in question, was the exclusive collective bargaining agent of all of the hourly-production and maintenance employees of the Ford Motor Company in all of its plants throughout the United States. The contract between the UAW workers and the Ford Motor Company was for a 5-year period expiring June 1, 1955.

It appears that during the spring of 1953 the local disputes which resulted in the Canton forge plant strike occurred, and ultimately were resolved, at the same time as a union-company dispute over modifications of the so-called master agreement. The briefs of claimants in these cases argue that the Canton forge plant strike was over purely local issues, and was unrelated to the negotiations for reopening and modification of the master agreement. It is the company's position that the Canton forge plant strike was a device employed by the union for the purpose of forcing modification of the master agreement. In either event, it appears that the settlement of the Canton forge plant strike, and the modification of the master agreement, both occurred on May 25, 1953, following by 3 days a similar modification of a national agreement between the UAW and the General Motors Corporation signed on May 22, 1953.

The claims of the respective parties were thus phrased by agreement of respective counsel, and by certification of the circuit court judge who heard this matter, in the statement of proceedings and facts accompanying application for leave to appeal addressed to this Court:

> "The claimants contend that they were laid off due to a lack of work, being involuntarily unemployed and in no way involved in a labor dispute; that a labor dispute did not occur in the establishment in

which they were employed; that the Michigan act does not include within either the definition of establishment or employing unit the Ohio plant of Ford Motor Company, whether for purposes of taxation or of disqualification; that, regardless of any other factor, there can be no disqualification of claimants in this case because the fundamental prerequisite for disqualification under section 29(1)(b) is the existence of a labor dispute in the establishment in which he is or was last employed, and that the establishment here does not include within its scope the plant in another State in which the labor dispute occurred; that the modification of the national agreement between the Ford Motor Company and UAW, May 25, 1953, was occasioned by the similar modification of the national agreement between UAW and General Motors Corporation 3 days earlier (May 22, 1953), and that the unemployment of claimants was in no way occasioned by this reopening of the Ford contract to conform with the action taken by General Motors; and that the labor dispute in the Canton, Ohio plant was over issues involving that plant only, and did not in any way involve a dispute in which these Michigan claimants were directly involved in any event.

"The employer, on the other hand, contends that a disqualification of the claimants does not involve an extra territorial application of the Michigan employment security act; that the Canton plant was and is a part of the Ford establishment within the meaning of section 29(1)(b) of the act; that there was close functional integration and synchronization between the Canton plant and its other automotive manufacturing and assembly units, departments and plants in the Detroit area and elsewhere; that its plants in the Detroit area depended upon a continuous flow of parts and material produced at the Canton plant in the manufacture of its product, namely, cars, trucks, and tractors; that in September 1952,

just 2 years after signing a 5-year collective bargaining agreement which by its terms was not openable until 1955, the International Union, UAW, enunciated its so-called 'Living Document' theory and as the exclusive collective bargaining agent of all employees covered by such master or national agreement including these claimants, demanded substantial changes in such master agreement; that in support of these demands the union embarked upon a course of conduct, from the early fall of 1952 to the time of the settlement of the Canton strike, directed toward bringing about more liberal pensions, adjustments in the cost of living allowances, vacations for retiring employees, increased wages and other matters applicable under the master agreement to all Ford UAW members including these claimants; that the Canton strike was a part of a broad program of harassment of the company on the part of the union and was used as a lever to pry concessions from the company with respect to the master agreement; that the issues in the Canton dispute became inseparably intertwined with the controversy over master contract changes; that the dispute over the master agreement changes brought about the Canton strike, or at the very least prolonged it to the point where the employer's plants in the Detroit area and elsewhere were shut down with the resultant unemployment of the claimants; that the claimants were directly involved in the dispute and shared in the substantial benefits gained for them in the dispute settlement; that owing to the functional integration between the plants and the strike which occurred in the Canton plant, it became necessary to close the Detroit area plants, causing the unemployment of the claimants, and that Ford, being 1 establishment, and the claimants being directly involved in the labor dispute, they were properly disqualified from receiving benefits under pertinent provisions of the labor dispute provision

of the act (section 29[1][b], subsections [2] and [4])."

Two cases are the subject of appeal by the claimants to this Court. In *Alexander Park, et al.* v. *Appeal Board, et al.*, Case No. 280,754, approximately 5,500* claimants were denied unemployment compensation by the Michigan employment security commission and, on appeal to the referee, found their claims denied there likewise. On subsequent appeal to the appeal board, the referee's decision was affirmed by a divided board, with the majority resting its opinion upon the holding "that all of the units of the Ford Motor Company, both in Michigan and Ohio, constituted 1 establishment within the meaning of that word as contained in the Michigan act." On appeal to the Wayne county circuit court, the circuit judge who heard the case found this issue to be the "pivotal" one, and entered this finding in affirming the decision of the majority of the appeal board:

> "That this issue may be determined at this level with finality, the court is of opinion and so finds, that the term 'establishment' as used in the Michigan employment security act is not confined to the State lines of Michigan; that, more specifically, in the cases at bar, the term 'establishment' comprehends the Michigan plants, *supra*, where the claimants were employed and the Canton, Ohio, forge plant where the strike compelling the stoppage of work at the Michigan plants, occurred."

In the Park Case, there is no issue pertaining to validity of the appeals.

The second case is entitled *John L. Dorsey, et al.* v. *Appeal Board, et al.*, Case No. 280,886. This case consists

*A certain number of the claims filed in both cases were otherwise disposed of.

of approximately 5,500 claims wherein the claimants did not take appeals themselves, except as will be noted later through representation by counsel and/or the union, and where no written authorizations for either representation or appeal appear in the record. All of the same issues (similarly decided below) as have just been recited in relation to the Park Case exist in the Dorsey Case. In addition, however, at the hearing before the referee, the defendant and appellee Ford Motor Company objected to this group of claims on the ground that no valid appeal had been taken. In his decision, the referee upheld this objection. On appeal to the appeal board of the Michigan employment security commission, the appeal board unanimously held that the appeals involved in the Dorsey Case were valid on the ground that the union was designated as agent of these employees in the union constitution and hence had the right to employ counsel on their behalf in prosecuting the appeals, and on the further ground that the commission recognized an appearance by counsel where, as a member of the bar, he entered appearances for the individuals concerned, and their actions ratified that appearance.

In the appeal of the Dorsey Case to the circuit court, the circuit judge, having previously entered a ruling on the "establishment" question which invalidated all claims in both cases, held that the validity of appeals issue was moot. The issue is preserved for review in this Court by a cross appeal upon this issue alone, taken by the Ford Motor Company.

The issues in this case, as we see them and shall decide them, are as follows:

1— As a matter of law, does the functional integration of a company's manufacturing plants located in Michigan and several other States make them a single "establish-

ment" within the meaning of the Michigan employment security act?

2— What effect, if any, do subsections 1, 2, 3 and 4 of section 29(1)(b) of the Michigan employment security act have upon disqualification of a claimant for unemployment compensation in the event it is found that his unemployment is not due "to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed"?

3— Under the facts revealed by this record, are the appeals advanced in the case entitled *John L. Dorsey, et al. v. Appeal Board of Michigan* employment security commission valid appeals?

The basic section to which we must turn for answers to the first 2 of these questions is section 29(1) of the Michigan employment security act (CLS 1952, § 421.29[1] [Stat Ann 1953 Cum Supp § 17.531(1)]):

> "An individual shall be disqualified for benefits:
>
> * * *
>
> "(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individuals shall be deemed to be directly involved in a labor dispute unless it is established:
>
> "(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other

employees have voluntarily stopped working other than at the direction of his employing unit, or

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

"(3) That at any time, there being no labor dispute in the establishment or department in which he was employed he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

"(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."

Webster defines "establishment" as follows:

"*d* The place where one is permanently fixed for residence or business; residence, including grounds, furniture, equipage, retinue, etc., with which one is fitted out; also, an institution or place of business, with its fixtures and organized staff; as, large *establishment;* a manufacturing *establishment.*" Webster's New International Dictionary (2d ed.), p. 874.

Exhibit A

Judges and lawyers can frequently do astonishing things with words. No layman would venture to suggest that the single word "establishment," used in the paragraph above, could in normal usage be applied to both the Ford Rouge plant in Dearborn, Michigan, and the Ford forge plant in Canton, Ohio.

The writer believes also that no layman, without a specific motive in mind, would read the statutory provisions quoted above and come to the conclusion that the legislature had any such inclusiveness in its intended use of the word. Although the statute carries within it no definition of "establishment," its use of the term is, in our opinion, such as clearly to rule out the broad interpretation sought by appellees. Thus, the statute defines the term "employing unit" in the same broad sense which appellees seek to apply to "establishment":

> " 'Employing unit' means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, * * *." CL 1948, § 421.40 (Stat Ann 1950 Rev. § 17.542).

And, in the second sentence of the same definition paragraph, it makes such use of the word "establishment" as, in our view, to preclude any attempt at definition in terms of all integrated plants of a company, wherever located:

> "All individuals performing services within this State for any employing unit which maintains 2 or more separate *establishments* within this State shall be deemed to be employed by a single employing unit for all the purposes of this act."

Indeed, since appellee Ford Motor Company's basic premise is that all of its plants are integrated with its

Michigan plants, it appears that appellee seeks an interpretation of the word "establishment" synonymous with the term "employing unit" as defined in the statute.

Yet, in the very disqualification section itself which we have quoted, in the prefatory sentence and in subsections 1, 2 and 4, we find uses of the 2 terms "employing unit" and "establishment" which clearly indicate that the legislature did not regard them as synonymous, and did regard the former as the broader and more inclusive term.

While the dictionary, the statute, and common sense all argue otherwise, we are urged that this Court, in *Chrysler Corp.* v. *Smith*, 297 Mich. 438, so defined "establishment" as to require our holding, as did the circuit judge and the appeal board, that the Ford Detroit area plants in Michigan and the Ford Canton forge plant in Ohio were all 1 "establishment."

It might be noted at the outset that no such factual situation was involved in *Chrysler* v. *Smith* as confronts us here. The plants there involved were all in 1 industrial community—the Detroit area; they were all located within 11 miles of one another; and they were all located in the State of Michigan. We deal here with a disqualification argument applicable to nonstriking employees in 3 Detroit area plants, all in Michigan, where the strike inducing the unemployment occurred in another community 150 miles away and in another State.

The difficulty to be faced in tying the definition of "establishment," as used in the act, to the primary test of integrated functioning, was foreseen by the circuit judge (now Mr. Justice Carr) who heard the *Chrysler* v. *Smith* Case at the trial court level:

> "Undoubtedly the legislature in the enactment of this law had in mind that there are numerous

enterprises in Michigan that, like the plaintiff, maintain different plants in which operations are conducted. If, as contended by counsel for the plaintiff, it was intended to embrace within the term all of the manufacturing properties of an employer I think we must assume that appropriate language indicating such intention would have been used. It is a matter of common knowledge also that many large business enterprises maintain plants in other States as well as in Michigan and the operations of such plants are more or less correlated. If the term 'establishment' is given the broad interpretation contended for, if it means all of the manufacturing properties of an employer, at least those that to some extent are functionally integrated, it is quite conceivable that we might have an establishment partly within and partly without the State of Michigan. However, there is nothing in the statute to suggest that the legislature had any such situation in mind and counsel have not discussed its possibilities." 59 (pt 2 Oct Term, 1940, Michigan Supreme Court Records and Briefs, pp. 2399, 2400 (*Chrysler Corp.* v. *Smith*, 297 Mich 438)).

The vigorous dissent recorded by Justices McAllister and Bushnell did likewise:

"No contention is made that integrated plants of different owners in the same State, or integrated plants owned by the same corporation operating under the laws of different States, or integrated plants in the same State or different States in which employees are represented by different bargaining agents, should be considered 1 establishment within the meaning of the act. The conclusion, therefore, would seem inevitable that the provisions of the act in no way contemplate that integration of plants is the sole criterion for the statutory interpretation of the word 'establishment'—and that several in-

tegrated plants are 1 establishment while several unintegrated plants are several establishments." Chrysler Corp. v. Smith, *supra*, p. 468.

This same opinion authored by Justice McAllister likewise provided a definitive analysis of the distinctions between the Michigan statute and that of Wisconsin which was construed by the Wisconsin supreme court in another case emphasized by appellee Ford Motor's brief, *Spielmann* v. *Industrial Commission*, 236 Wis 240 (295 NW 1).*

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*"Since the argument of this case, the supreme court of Wisconsin has had occasion to pass upon the meaning of the term 'establishment' as used in the unemployment compensation act of that State, and appellant Chrysler Corporation cites the decision thereupon as authority for its contention before us. *Spielmann* v. *Industrial Commission*, 236 Wis. 240 (295 NW 1). The cited case involved claims for unemployment compensation arising out of a stoppage of work in the plants of the Nash-Kelvinator Corporation. A strike caused the closing of 1 plant which resulted in stoppage of work and plaintiff's unemployment in another plant 40 miles away. The question to be decided was whether the labor dispute in the first plant was a labor dispute in active progress in the establishment in which plaintiff was employed. The court concluded that the 2 plants constituted a single establishment within the meaning of the Wisconsin statute.

"In considering the Wisconsin Case, we deem it significant that the court, in construing the term 'establishment,' particularly emphasized that, in arriving at its determination of the meaning of that word, the purpose of the statute must be considered, and that the statute must be construed to effect that purpose, if discoverable, and if such a construction were possible. The court then pointed out that it was the employer upon whom the burden was placed to accumulate the fund out of which benefits were to be paid, and that it was the company who was required to accumulate the fund; that the employer was encouraged by the act to furnish steady employment. It was further emphasized that these declarations of purpose pointed to the construction reached by the court that the 2 plants constituted a single establishment. Moreover, the court observed that the fact that the employee was not himself at fault for his loss of employment, was not the sole cause, under the statute, for suspension of benefits; that the law provided that such an employee was not eligible in case the loss of employment was caused by act of God, fire, or other catastrophe, or act of civil or military authority affecting the place of employment.

Exhibit A

Factually, the Wisconsin Case was even more remote from our present facts since the 2 plants there held to be 1 "establishment" within the meaning of the Wisconsin statute were both in the same State though 40 miles apart, were both under 1 general works manager, and were operated on 1 production schedule maintained by trucks scheduled between the 2 plants with deliveries so synchronized that a body built for 1 order at Milwaukee would

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The court concluded its discussion of this question by stating that the meaning of the word 'establishment' was to be drawn from the whole act, 'rather than from so insignificant a thing as a single proposition.'

"The differences between the Wisconsin and Michigan statutes are obvious. In the Wisconsin statute there is no declaration of policy, as in our law, that the accumulation of funds for unemployment reserves should be used for the benefit of persons unemployed through no fault of their own, in order to limit the consequences of relief assistance. In this connection, the court, in the cited case, observed that in many instances compensation for loss of employment was denied under the Wisconsin law, although the unemployment resulted 'from no fault of the employee and the loss is beyond his power to prevent.' Furthermore, the Wisconsin law sets forth in its declaration of policy that each employer should finance compensation for his own unemployed workers and that each employer's contribution should vary with his own unemployment costs. The reserves, under the Wisconsin law, are in the nature of private funds of each employer to be used for his unemployed workers. The State acts as a trustee. The Michigan fund is a general pooling, made up of various contributions, for the benefit of all unemployed workers, whether in the plant of the employer making the contribution or in another plant. Our State declares its public policy is to provide against *involuntary unemployment*. There is no similar provision in the Wisconsin law; and that is not the criterion for the payment of benefits under the statute of that State. With regard to declarations of policy, the Wisconsin decision does not militate against the expressed policy of the law of that jurisdiction. To give the construction to the Michigan statute which is contended for by appellant is a negation of the declared policy of our legislature. Under these circumstances, and because of the differences in the objects and declarations of policy in the 2 statutes, we do not consider the Wisconsin case as authority to be followed in the instant controversy." McAllister dissent, Chrysler Corp. v. Smith, *supra*, 464-466.

meet the chassis for the same order built at Kenosha on the assembly line, without intermediate storage.

On the other hand, the record in the cases considered herewith indicates for all plants concerned entirely separate and distinct plant managements and plant production schedules, as well as separate and distinct industrial relations and employment offices, employee seniority lists, local unions, and local labor-management agreements.

We now turn our attention to precedents which deal directly with unemployment compensation cases where it has been argued that a strike in a plant in 1 State disqualifies those laid off as a result in an integrated plant of the same company in another State.

In 1949 a strike occurred in the Ford Rouge plant in Michigan. The effect of that strike was eventually to paralyze production in a considerable number of Ford assembly plants located in various States. The workers thus laid off sought unemployment compensation benefits under statutes quite similar (though in no case identical) to our own. In these cases, too, there were national issues pending on the bargaining table between the same union and the same company as are here involved, and the company arguments for disqualification of the employees-claimants were based on the contention that the Rouge plant strike in Michigan was really carrying forward the industrial argument for the benefit of Ford union members in New York, Georgia and California, to mention only the most widely scattered of the plants.

The cases referred to arose from unemployment claims filed by workers at Ford plants (most of them assembly plants) at Hapeville, Georgia (see *Ford Motor Co.* v. *Abercrombie*, 207 Ga 464 [62 SE2d 209]); Louisville, Kentucky (see *Ford Motor Co.* v. *Kentucky Unemploy-*

ment Compensation Commission, 243 SW2d 657); Somerville, Massachusetts (see *Ford Motor Co.* v. *Director of the Division of Employment Security,* 326 Mass 757 [96 NE2d 859]); St. Paul, Minnesota (see *Nordling* v. *Ford Motor Co.,* 231 Minn 68 [42 NW2d 576]); Metuchen and Edgewater, New Jersey (see *Ford Motor Co.* v. *New Jersey Department of Labor & Industry,* 5 NJ Rep 494 [76 A2d 256]); Buffalo and Green Island, New York (see *Machcinski* v. *Ford Motor Co.,* 277 NY App Div 634 [102 NYS2d 208]); Chester, Pennsylvania (see *Ford Motor Co.* v. *Unemployment Compensation Board,* 168 Pa Super 446 [79 A2d 121]); Dallas, Texas (see *Ford Motor Co.* v. *Texas Employment Commission,* 7 CCH Unemployment Insurance Rep, par 8148, p 46,744); and Norfolk, Virginia (see *Ford Motor Co.* v. *Unemployment Compensation Commission,* 191 Va 812 [63 SE2d 281).

As we have previously noted, compensation was allowed in 8 of these 9 cases after rejection of the argument that Ford Motor Company integration rendered the individual far-flung plants 1 establishment with the Ford Rouge plant in Dearborn, Michigan. The exception was the Georgia Case, where the Georgia supreme court rejected liberal construction of the unemployment compensation act and flatly stated with a finality unhampered by excess concern for fine definition or logic:

> "We therefore hold that the Hapeville plant, at which the claimants were employed, and the Dearborn parts-producing plant, where the strike occurred and which compelled cessation of work at the Hapeville plant, were inseparable and indispensable parts of 1 and the same 'factory, establishment, or other premises' as contemplated by those terms as employed in the act now being construed." Ford Motor Co. v. Abercrombie, 207 Ga 464, 470.

Exhibit A

That court also found as a fact that there was no participation in, nor causing of, the strike by any of the claimants, but that they were bound by the actions of their international union officers in authorizing the Rouge plant strike on the theory of principal and agent. This holding would, of course, suggest that any strike in any plant of any employer in any State would disqualify for unemployment compensation benefits any employee of any other plant, whether in the same State or not, and whether owned by the same employer or not, provided he was unemployed as a result of that strike and the strike was called by the same union.

We find no warrant for such conclusions in the Michigan statute.

The balance of the courts followed definition of the word "establishment" very similar to that which we have referred to. The New Jersey supreme court held:

> "The standard of 'functional integration' is not to be found in the legislative expression. The statutory sense of the term 'establishment is not embracive of the whole of Ford's far-flung enterprise as a single industrial unit. It has reference to a distinct physical place of business. Such is its normal usage in business and in government. *A. H. Phillips, Inc.*, v. *Walling*, 324 US 490, 65 S Ct 807, 89 L ed 1095 (1945). 'Establishment' is defined as the 'place where one is permanently fixed for residence or business'; also, 'an institution or place of business.' Webster's New International Dictionary, 2d ed." *Ford Motor Co.* v. *New Jersey Department of Labor & Industry*, 5 NJ Rep 494, 502.

The Virginia supreme court, with reasoning we consider sound, held:

> "The unemployment compensation act was intended to provide temporary financial assistance to

workmen who became unemployed without fault on their part. The statute as a whole, as well as the particular sections here involved, should be so interpreted as to effectuate that remedial purpose implicit in its enactment. When its purpose is kept in view, we cannot agree that managerial and operational integration and functional cooperation upon the official level are to be the chief factors upon which employment status and employees' rights are to be determined. Our problem is, in the final analysis, to recognize the remedial aim and purpose of the act and then interpret and construe the language and apply it to the facts proved. In doing this, we do not think that the contractual obligations and relations brought about through execution of the master labor contract by Ford Motor Co. and UAW-CIO may be considered as determining whether or not the Norfolk plant and the Rouge plant constitute and are 1 establishment within the meaning of the statute. Those plants either constitute 1 establishment or separate establishments regardless of whether the master labor contract is or is not in force. The circumstances of employment, rather than those of management and operation, are of primary importance in determining the unity and integration, or the lack of unity and integration, of the plants. The accumulative weight and effect of these circumstances, we think, are sufficient to show that the Norfolk assembly plant is separate from the Rouge plant. No labor dispute or strike was fomented or participated in by the local union to which the claimant employees belong, nor was there any labor dispute on the premises, at the plant, or in the establishment where they were actually employed. The labor dispute and resultant strike were in fact and in reality at and in Dearborn. The most that can be said is that the management and operation of the vast and far-flung Ford Motor industry is so integrated and synchronized that a serious strike at its head-

> quarters and in its principal plants at Dearborn must in time affect the entire industry and cause the shut down of plants and other establishments wherever situated. The dependence of 1 or more plants in this great industry upon the home office and principal manufacturing establishment does not, however, necessarily make of the entire industry 1 plant or 1 establishment." *Ford Motor Co. v. Unemployment Compensation Commission,* 191 Va. 812, 824, 825.

In a number of the cases we have referred to, the act construed referred to "factory, establishment or other premises," as was true in the draft version of the model statute.* In the case arising from the shut down of the St. Paul, Minnesota, assembly plant, the word "establishment" was employed alone after amendment had deleted the accompanying words "factory" and "other premises"—in short, the same situation as prevails at present in relation to our Michigan statute.

In a very similar fact situation with a very similar statutory provision to construe, the Minnesota court set forth the following analysis of the "establishment" problem on which we do not think we can improve:

> "Rather than distinguish the cases on differing facts, we prefer to place decision on the broader ground that we believe that the test of functional integrality, general unity, and physical proximity should not be adopted as an absolute test in all cases of this type. No doubt, these factors are elements that should be taken into consideration in determining the ultimate question of whether a factory, plant, or unit of a larger industry is a separate establishment within the meaning of our employment and security law. However, there are other factors which must also be taken into consideration. The difficulty

*Draft Bills for State Unemployment, § 5 (1936), published in Washington, D. C., by US Social Security Board.

with attempting to use, as an absolute test, the factors laid down in the Spielmann case comes in its application to the facts of a particular case. Many enterprises have functional integrality between factories which are separately owned. Some are so integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. That is the situation which we have in the instant case. Out of some 3,800 or 4,000 parts, about 900 come from the Rouge plant. Some come from other plants owned by the Ford Motor Company, and still others come from plants independently owned. A shutdown caused by a strike or other labor dispute at 1 of such independent vendors might conceivably cause a shutdown at the St. Paul Ford plant. This did actually happen in 1945, when a strike occurred at the Kelsey Hayes plant. We assume that it is not uncommon that the same international union would represent the employes of several independent plants or factories operating as the Ford plant does with its independent vendors, but we do not believe that anyone would contend that a strike at the plant of such independent vendor would disqualify employes of the Ford plant if it was forced to shut down on account of the lack of parts furnished by such independent vendor.

"Proximity is equally unsatisfactory. In order to apply this factor, what distance shall be considered short enough to constitute proximity? Shall the St. Paul branch of the Ford plant be close enough to the Rouge plant and the Georgia or Los Angeles plants, operating in a similar manner, be too far away, or shall any 2 plants anywhere in the United States be near enough?

"Nor is general unity of itself a test. Our statutes recognize that the same employing unit may maintain 2 or more separate establishments within the State. § 268.04, subd 9. It might be argued that the legislature had in mind separate establishments

which are not related in any way, but the legislature did not so state, and we do not believe it can be read into the statute. In A. H. Phillips, Inc. v. Walling, 324 US 490, 65 S Ct 807, 89 L ed 1095, 157 ALR 876, *supra*, there was general unity, but that did not prevent the court from holding that the warehouse was an establishment separate from the retail part of the business.

"If, then, these tests standing alone do not suffice, is it a combination of all of them which makes them sufficient? If 1 is lacking, are the others sufficient, or must they all concur? We believe the better rule to be that these factors, together with other facts, must be taken into consideration in determining whether the unit under consideration is in fact a separate establishment from the standpoint of employment. The St. Paul branch of the Ford Motor Company is highly integrated with other units of the company for purposes of efficient management and operation, but is separate insofar as the employes are concerned for the purpose of employment. The employes are hired and discharged by the St. Paul manager. They are members of a local union which has no connection with the locals at Dearborn, except that all locals are members of the same international, as are many others not connected with the Ford Motor Company. The seniority rights of the employes extend only to operations at the St. Paul plant. No showing has been made, nor do we believe that any can be made, that an employe at the St. Paul branch can 'bump' an employe at the Rouge plant, the Los Angeles plant, the Georgia plant, or anywhere else than at the St. Paul plant. Payment to the Minnesota unemployment compensation fund is made only for employes at the St. Paul plant, and, obviously, benefits can be drawn only by employes in the St. Paul branch from the Minnesota fund. Employment under the act relates to services preformed within the State or localized here. The members of

Local 879 had nothing to do with calling the strike at the Rouge plant and could do nothing to avert it. While the record does not so show, we assume that under our act the contribution rate of the employer is based on the experience ratio of employes within this State without any regard to the experience in other States.

"Under § 5(d) of the act proposed by the social security board and under our original act, the unit of employment within which the labor dispute must exist in order to disqualify was designated as the '*factory, establishment, or other premises* at which he is or was last employed.' (Italics supplied.) Under our present act, § 268.09, subd 1(6), the strike or labor dispute must be in progress 'at the *establishment* in which he is or was employed.' (Italics supplied.) It is doubtful that the change in terminology was intended to enlarge or diminish the unit of employment affecting the disqualification. It has been held that the words 'factory, establishment or other premises' in the Alaska act, which is similar to the Federal act, were *ejusdem generis* and that the principle of *noscitur a sociis* applies. Aragon v. Unemployment Compensation Comm. (9 Cir.) 149 F2d 447, *supra*.

"We are inclined to believe that in our original act the word 'establishment' was intended to include those places of employment which could not be classified as a factory; that in the amendment the legislature concluded that the term 'establishment' was inclusive of factory and all other types of employer units; and that there was no further need to use the word 'factory.' For a discussion of the distinction between factory and establishment, see General Motors Corp. v. Mulquin, 134 Conn 118, 55 A2d 732, *supra*.

"The term 'establishment' as used in our amended act should be given no broader meaning than it had in the original act, except that it now includes 'fac-

> tory' and 'other premises' set out separately in the original act. Our act, patterned after the act proposed by the social security board, is in turn patterned after the British National Insurance Act of 1911 (1 & 2 George V, c 55, pt 2, § 87), which was amended in 1935 (25 George V, c 8, pt 3, § 26). Under both the 1911 and the 1935 British acts, disqualification is based upon a work stoppage due to a trade dispute at the '*factory, workshop or other premises*' (italics supplied) at which the claimant is employed. The British umpire, which is the final arbiter under the British act, has consistently held that the words 'factory, workshop or other premises' refer to single units of employment. The only substantial change in the language of our original act from the British act was that the word 'establishment' was substituted for 'workshop.' It is difficult to believe that this change was intended to broaden the scope of the employment area so as to encompass a whole industry rather than a single unit of employment." Nordling v. Ford Motor Co., 231 Minn. 68, 85-89.

For further complications which arise if, as argued to us by appellees, the test of integrated function is primary in definition of "establishment," we make brief reference to *Tennessee Coal, Iron & R. Co.* v. *Martin,* 251 Ala. 153 (36 So2d 547). There the employer argued for disqualification of nonstriking members of the United Mine Workers when their coal-mining operations were shut down as a result of strikes by other unions in the steel-making and ore-mining operations of the company. The Alabama supreme court rejected the integration argument, holding that the words of their act must be interpreted as "they are commonly used and understood." (p. 158.)

While we believe the appeal board and the circuit judge were right in terming the interpretation of the word "estab-

lishment" the "pivotal issue" of this case, we believe they were wrong in extending the definition of "the establishment" employed in *Chrysler* v. *Smith*, *supra*. Indeed, on the basis of what has been said, we feel constrained to hold that to the extent that *Chrysler* v. *Smith* adopted "integral functioning" as the basic test of the extent of "the establishment" in the Michigan employment security act (CLS 1952, § 421.29[1] [Stat Ann 1953 Cum Supp § 17.531(1)]), it is overruled.

The appeal board found, on the point in question, and the circuit judge subsequently affirmed, the following:

> "It is our opinion, and we so find, that the unemployment of the claimants in the case at bar was due to and grew out of a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and that all of the units of the Ford Motor Company, both in Michigan and Ohio, constituted 1 establishment within the meaning of that word as contained in the Michigan act."

For the reasons we have cited, we hold this finding erroneous as a matter of law.

Subsequently, the appeal board turned to the question of whether or not the claimants concerned were "directly interested" in the outcome of the labor dispute under the provisions of subsection 2 of paragraph (b) of section 29(1).

The opinion of the majority of the appeal board, by whose findings of fact we are bound if supported by "the great weight of the evidence" (CLS 1956, § 421.38 [Stat Ann 1957 Cum Supp § 17.540]), accepts the testimony of appellees to the effect that the Canton strike was a part of a union plan to force company concessions upon the master contract, thus affecting the interests of Michigan claim-

ants. While the record indicates that this fact issue was hotly contested, we do not find it necessary to determine whether or not the findings in this regard are supported by the great weight of the evidence.

A reading of section 29(1)(b) indicates clearly that it applies only to disqualification of "an individual" "for any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed." That there was a stoppage of work is obvious, as is the fact that there was a labor dispute. Plainly, the labor dispute which caused the stoppage was, however, in the Canton forge plant which we have held to be no part of "the establishment" in which claimants were last employed. Michigan claimants, under our act and on this record, cannot be found responsible for that dispute unless we indulge the principal-agent argument previously quoted from the Georgia court which we have rejected.

Further, the basic disqualification finding required in the first sentence of section 29(1)(b) must be legally made before the proviso relating to "direct involvement" becomes effective, and before considering or applying the tests of direct involvement set forth in subsections 1, 2, 3 and 4.

We have considered with care the opinions of this Court on rehearing in *General Motors Corporation* v. *Unemployment Compensation Commission*, 321 Mich 724. The Court there considered the relationship between subsection 4 and subsections 1, 2 and 3 of section 29(1)(b), though in its language the Court did not call attention to the fact to which we now refer (i.e., that none of these subsections become effective for disqualification purposes absent a finding of a stoppage of work existing because of a labor dispute in the establishment in which the claimant is or was last employed). No such reference was required

since obviously, in the facts there presented, the basic condition was met.

See also, *Buzza* v. *Unemployment Compensation Commission*, 330 Mich 223.

It may be also that no reference was thought necessary in view of the specific nature of the language of the proviso which precedes subsections 1, 2, 3 and 4:

> "(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: *Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individuals shall be deemed to be directly involved in a labor dispute unless it is established:* * * *" (Italics supplied.)

The supreme court of New Jersey, construing similar language in its unemployment compensation act, said:

> "The statutory concept is an employment unit within the State, and compensation where the unemployment is involuntary. There is disqualification for benefits under the particular clause only where the unemployment is the result of a labor dispute at the factory, establishment, or other premises where the claimant 'is or was last employed,' and not then if individual non-participation is shown as provided in the statute." *Ford Motor Co.* v. *New Jersey Department of Labor & Industry*, 5 NJ Rep 494, 505.

The proviso and the subsections are plainly designed to allow compensation to some claimants held not "directly involved" under the definitions therein when otherwise they would be disqualified under the terms of the first sentence.

Thus, we hold that the direct interest finding of the appeal board under subsection 2 of section 29(1)(b), even if supported by the great weight of the evidence, does not, standing alone, occasion disqualification.

The last of our questions pertains to the representation issue posed to us in the Dorsey Case. In the case of these claims, the Ford Motor Company appeals from a finding of fact entered by the appeal board holding the appeals valid and a ruling of the circuit judge that the issue was moot because of his denial of all claims on grounds of the "establishment" question.

Appellant Ford Motor on this point contended before the appeal board that the attorney for claimants filed claims of appeal without written or other authority so to do, and that, since the statute* required individual claims and appeals, those in the Dorsey Case were invalid.

As to these contentions, the appeal board found:

> "It is contended that under the union constitution the international can represent its members only in any matter affecting his status as an employee, and that a labor dispute resulting in the filing of claims for benefits does not fall within the purview thereof. Equally contentious is the claim that the delegation of power contained in the application for membership limits the union to its appearance in the presentation, prosecution, adjustment and settlement of all grievances, complaints, or disputes of any kind or character arising out of the employer-employee relationship.
>
> "We believe this is a restricted view in the light of the statutory provision. The statute authorizes representation by counsel. While the written authorizations do not specifically mention representation in

*See CLS 1952, §§ 421.32, subd (c), 421.32a, 421.33, 421.36 (Stat Ann 1953 Cum Sup §§ 17.534, subd (c), 17.534[1], 17.535, 17.538.

the adjustment of compensation claims, the spirit, intention and language contained therein is sufficiently declaratory of such representation. These claimants were laid off because of a labor dispute growing out of grievances which had been the subject of negotiations over a long period of time. There was a 'dispute' between them and the company affecting the employer-employee status resulting in the filing of claims. It is our opinion that the claimants duly authorized their union, or such counsel as it might choose, to represent them as their agent in the processing of their claims. The union selected Mr. Zwerdling, an attorney of repute and a member of the State Bar of Michigan. (It may here be said that this decision relates only to the right of an attorney at law to represent, file appeals and appear for claimants and to no one else.) Mr. Zwerdling thereupon appeared before the commission in person and by correspondence requesting redeterminations, and entered his appearance for the many claimants. Such redeterminations being adverse to the interests of claimants, he processed written appeals in behalf of each of them in his name as their representative, simultaneously entering his appearance as attorney therefor. The fact that a very few claimants determined upon their own representation is of no importance here. The more important fact is that practically all of the claimants have, by their silence, ratified his representation of them. To this date we have learned of no protests. It is argued that because some 5,700 employees signed a certain form published in the union paper 'Ford Facts' expressly authorizing the union to represent them in processing their claims, whereas the claimants herein did not, their appeals to the referee were properly dismissed. In the light of the foregoing it was unimportant whether any of them signed the forms.

"Upon this branch of the case it is our opinion that the referee erred in dismissing their appeals and his decision is hereby reversed."

Exhibit A

The provision from the union constitution as printed on the membership application was:

> "I further irrevocably designate, authorize and empower the said union exclusively to appear and act for me and in my behalf before any board, court, committee or other tribunal in any matter affecting my status as an employee, or as a member of said union, and exclusively to act as my agent to represent and bind me in the presentation, prosecution, adjustment and settlement of all grievances, complaints or disputes of any kind or character arising out of the employer-employee relationship, as fully and to all intents and purposes as I might or could do if personally present."

We believe the appeals presented in the Dorsey Case are valid; but not for the reason given by the appeal board. Under the language of the Michigan employment security act, each claim is an individual case, and must be initiated by the claimant or his representative. The act speaks repeatedly in terms of "an individual" or "a claimant." CL 1948 and CLS 1952, § 421.1 *et seq.* (Stat Ann 1950 Rev and 1953 Cum Sup § 17.501 *et seq.*).

The argument that the paragraph quoted from the union constitution represents a general power of attorney in cases of this nature seems ill-founded to us. Powers of attorney, even when specifically so designated, are strictly construed and cannot be enlarged by construction. *Bergman* v. *Dykhouse,* 316 Mich 315; *Magilavy* v. *Fekete,* 251 Mich 518; *Jeffrey* v. *Hursh,* 49 Mich 31.

This record makes clear that Mr. Zwerdling filed appearance on behalf of these claimants and, under oath, certified that he was attorney for the claimants thus appearing. Under the employment security statute, and the rules of the appeal board, claimants can be represented by

counsel. CL 1948, § 421.31 (Stat Ann 1950 Rev § 17.533); Michigan employment security commission appeal board Rule 12 (1954 AC § R 421.412).

When an attorney enters an appearance in behalf of a party, a presumption arises that the attorney was properly authorized. *Corbat* v. *Timmerman,* 95 Mich 581; *August* v. *Collins,* 265 Mich 389; 88 ALR 12, 15

The record discloses that the Michigan employment security commission had promulgated a policy incorporating this presumption on August 20, 1952.

There is literally nothing in this long record to rebut this presumption. On the contrary, many of the claimants appeared at the hearing before the referee held in Detroit in the main auditorium of the Rackham building. Counsel for the claimants indicated that those present were prepared to testify presumably on this as on other aspects of the dispute. One claimant, Frank H. Depew, apparently called as typical, whose appeal will be governed by our decision in the Dorsey Case, testified as follows:

> "Q. And do you presently want the firm of Zwerdling & Zwerdling to represent you in this case before this referee?
> "A. Yes."

The referee at one point stated:

> "All of the 11,519 claimants are considered present at this hearing by virtue of the presence of their attorney, Mr. A. L. Zwerdling, the gentleman on my right,"

and, at still another point, urged claimants present who had occasion to do so to go to their jobs, assuring them

> "Your matter will be handled by your attorney."

If there are any of these claimants who did not authorize the filing of an appeal, they certainly are not identified on this record.

We see no occasion to hold these claimants to a requirement of written authorization of counsel not contemplated by the employment security statute, or commission rules, nor for that matter by any statute or rule of any other court in the State of Michigan.

Although the matter is not directly before us, we feel that some reference should be made to the real issue which disturbs the parties and the commission. The record shows that Mr. Zwerdling was employed and paid by the UAW-CIO to prosecute these appeals and represent these claimants. On this point, the Ford Motor Company calls Canon 35 to our attention:

"CANON 35. *Intermediaries*

> "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigents are not deemed such intermediaries.
>
> "A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

Exhibit A

In reply thereto, claimants' brief presents the practical problem involved which doubtless moved the employment security commission to take a unanimous stand in favor of indulging a presumption of authorization on an attorney's appearance for a claimant:

> "It was the intention of the Federal congress and of the various State legislatures, in enacting unemployment insurance acts, to make proceedings as simple as possible. It was recognized that the claims which would be filed might involve very small amounts and it would be difficult, if not impossible, to secure legal representation. Take the instant situation for example. How many of the claimants here could have pursued appeals of their claims for benefits representing periods of between 1 and 3 weeks, possibly involving from $27 to $105, if it were necessary for them to secure direct legal representation or other representation without union assistance? If they had not secured representation, and presented their cases themselves, could they have adequately coped with the complex issues involved?"

Under the disposition we make of this case, we find no occasion to pass on the legal ethics problem presented, but note it as unresolved for the attention of the parties, the employment security commission, and the Michigan State Bar.

For the reasons previously set forth, we feel that the circuit judge should have affirmed the finding of the appeal board holding valid the appeals in the Dorsey Case.

In summary, it appears from the opinions filed in this matter that all participating members of this Court are in agreement that the majority interpretation of the words "the establishment" in *Chrysler* v. *Smith, supra,* was in error and that the interpretation placed thereon by Mr. Justice

Carr as trial judge, and adopted by the minority of the Court in the Chrysler Case, was correct. What divides our Court at this time is not a difference in reading of the statute, but a difference of opinion as to whether or not this Court can correct its own errors.

It is urged upon us that although the interpretation of this statute in *Chrysler* v. *Smith, supra*, was wrong, both the length of time which has intervened and legislative failure to alter the statute have now rendered the error subject to correction only by the legislature.

This doctrine, that silence means consent, has been dealt with eloquently and recently by Mr. Justice Smith (*Sheppard* v. *Michigan National Bank*, 348 Mich 577, pp. 599, 600, 601), and Mr. Justice Voelker (*Van Dorpel* v. *Haven-Busch Co.*, 350 Mich 135, pp 147-153). Judicial history contains many instances where judicial error has been subsequently overruled both by this Court (***Bricker* v. *Green,*** 313 Mich 218 [163 ALR 697]; *Sheppard* v. *Michigan National Bank, supra*), and by the supreme court of the United States* (*Girouard* v. *United States*, 328 US 61; *Brown* v. *Board of Education of Topeka*, 347 US 483).

In the Girouard Case which overruled a line of previous decisions (*United States* v. *Schwimmer*, 279 US 644; *United States* v. *Macintosh*, 283 US 605; *United States* v. *Bland*, 283 US 636), the majority opinion stated:

> "We are met, however, with the argument that, even though those cases were wrongly decided, congress has adopted the rule which they announced. The argument runs as follows: Many efforts were made to amend the law so as to change the rule announced by those cases; but in every instance the bill died in committee. ***

*Note illuminating article on this subject, Blaustein & Field, *"Overruling" Opinions in the Supreme Court*, 57 Mich L Rev 151.

Exhibit A

> "We stated in *Helvering* v. *Hallock*, 309 US 106, 119, that 'It would require very persuasive circumstances enveloping congressional silence to debar this court from reexamining its own doctrines.' It is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law. We do not think under the circumstances of this legislative history that we can properly place on the shoulders of congress the burden of the court's own error."

Reversed for entry of judgments granting benefits to claimants in both cases. No costs, public questions being involved.

Kelly, J., concurred in result.

Smith, Black and Voelker, JJ., concurred with Edwards, J.

The majority opinion of *Chrysler Corp.* v. *Smith*, 297 Mich 438 (1941) looks in vain for a defender around our conference table. No one here is quite so bold as to do it reverence. Yet the Chief Justice would have us consecrate —and so perpetuate—the tragic and now conceded* blunder made by Chrysler's majority when the statutorily employed

*Our admission that Chrysler's majority erred is fully chronicled with release of present opinions. In the first instance Mr. Justice Carr, then the circuit judge whose decision was reviewed in Chrysler, reasoned with Chrysler's minority that "plaintiff's (Chrysler) different plants *must* be *regarded as separate establishments* insofar as the application of section 29, subd. (d) is concerned." Now, by the opinion he has proffered for signature in the cases before us, the Chief Justice says—"Were this a matter of first impression"—he would find himself in agreement with Chrysler's minority. Finally, 4 more members of the Court as now composed have agreed that Chrysler's majority dialectic (that all involved units of Chrysler Corporation "constitute one 'establishment' within the meaning of that term as employed in the act") should at long last be set right (See above opinion of Mr. Justice Edwards). Thus our confession of Chrysler's mistake, if not exactly hearty, so far stands unopposed in these chambers.

word "establishment" was construed, over sharp and unerring dissent, in such manner as to deny unemployment benefits to thousands of industrial employees; employees we now know were rightfully entitled to such benefits.

Admitting that Chrysler's minority was and is right, the Chief Justice interposes the perennially debated rule of *stare decisis*—in its most extreme and wholly discredited form of judicial self-stultification—as a pronounced bar to correction by this Court of its so confessed error. In plain bread and butter words, the asserted position amounts to no more than this: Because, in 1941, an irreparable injustice was committed by the Court against a multitude of Chrysler employees—legislature since having remained disinterested in correction by its hand of our grievous misinterpretation at that time—, the Court in 1959 must equally oppress thousands more of correspondingly situated Ford employees; indeed, must continue such oppression in the future like cases until the legislature directs otherwise. Thus rudely denuded, we behold the altiloquent notion that *stare decisis* renders judicial error—of statutory interpretation—frozen-final so far as the errant appellate court is concerned. Needless to say, we reject both the notion and its disreputable postulates.

This disputed ground has recently been fought upon, inconclusively so far, by our dividend membership. In *Sheppard* v. *Mich. Nat'l. Bank*, 348 Mich 577, 596-603, Mr. Justice Smith—supported by Justice Voelker and the writer—hewed the reasoned and authoritative answer to this proposition that a court of last resort has but one fateful and irretrievable opportunity to construe a standing statute. In the next ensuing term the issue was skirmished again, this time to a 4-4 draw. See *Van Dorpel* v. *Haven-Busch Co.*, 350 Mich. 135, 145-155, wherein Mr. Justice Voelker, supported by Justices Smith and Edwards and the writer,

seized and shook "this beguiling doctrine" (that if a legislature "delay long enough to correct our errors those errors thus become both respectable and immutably frozen") and found that it amounted to outright abdication of judicial responsibility and a fast pass of duty buck to a coy and wary legislature. It is time that this unseemly duel be brought to an end, and so it is ordained by majority signature this day of Mr. Justice Edwards' foregoing opinion; an opinion which definitely commits this Court to the not-so-formalistic view of *stare decisis* one finds in the above identified opinions of Justices Smith and Voelker.* More should be said, though, lest our interpretation of the doctrine of *stare decisis* (as applied to the cases now here) be construed in some eager quarters as complete disregard of a judicial rule which, in its proper setting of discretionary application, the undersigned have always respected and continue to respect.

In these early days of 1959, no member of this Court may pretend unawareness of the stark fact that the philosophic debate shown in Sheppard and Van Dorpel has boiled to high temperature at national jurisprudential levels. From the current "outburst of criticism" one naturally would gather that discretionary distinguished from monolithic application of *stare decisis* is something new and repugnant to proper judicial conduct; that the practice threatens our liberties and free institutions, and that legis-

*Note how *Arrow Builders Supply Corp.* v. *Hudson Terrace Apartments, Inc.*, 15 NJ 418 (105 A2d 387), cited and quoted by Mr. Justice Voelker in Van Dorpel at pages 150-152, has brought about a recent recast of the text of American Jurisprudence (see 14 Am Jur 1958 Cum Sup Courts, § 66, p. 47). The text, citing Arrow, is now decidedly modified as follows:

> "The principles of *stare decisis* and legislative acquiescence in the judicial interpretation of statutes are not absolute, however, and must give way to overriding considerations under cogent circumstances."

lation (by Constitutional amendment or otherwise) is necessary to curb present-day appellate judges whose view of *stare decisis* is not of rigid adherence to the formulas of former adjudication (See "The Supreme Court Must be Curbed", U. S. News and World Report, May 18, 1956; "A Court Under Fire", U. S. News and World Report, March 21, 1958; "Supreme Court: A Critical Look by State Justices", U. S. News and World Report, August 29, 1958; "What a State Chief Justice Says About The Supreme Court", U. S. News and World Report, December 12, 1958, and the "Crusade" of Dozier A. De Vane, "until recently chief judge of the U. S. District Court for Northern Florida", U. S. News and World Report, December 26, 1958). Now let us examine this "outburst" in the light of that which surely was respectable in the known days of judicial respectability.

In 1910, long before such outburst was manufactured and launched, the following levelheaded definition of *stare decisis* appeared in the official reports (*Hertz* v. *Woodman*, 218 US 205, 212):

> "The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided."

In 1932 Mr. Justice Brandeis recorded his enduring epigram that "*Stare decisis* is not, like the rule of res judicata, a universal, inexorable command." (*Burnet* v. *Coronado Oil and Gas Co.*, 285 US 393, 405). From that point, and having approvingly quoted Hertz' rule as above, the Justice went on to say:

> "Stare decisis is usually the wise policy, because in most matters it is more important that the appli-

> cable rule of law be settled than that it be settled right. Compare National Bank v. Whitney, 103 U. S. 99, 102, 26 L. ed. 443, 444. This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation.* But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." (pp 406-408 of Burnet's report)

In *Helvering* v. *Hallock*, 309 US 106, 119-121, the Court came to grips with today's identical controversy. Having found an earlier rule of statutory construction quite untenable, the Court was immediately confronted by a contention that Congress, having failed to correct the Court's error, had perforce ratified that error and thus had rendered it immune from judicial correction. The Court said (Justices Roberts and McReynolds dissenting):

> "We recognize that stare decisis embodies an important social policy. It represents an element of continuity in law, and is rooted in the psychologic need to satisfy reasonable expectations. But stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience. * * *

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*Here, as footnote 1, Justice Brandeis listed a number of authorities in support of this terse explanation: "This Court has, in matters deemed important, occasionally overruled its earlier decisions although correction might have been secured by legislation."

Exhibit A

"Nor does want of specific congressional repudiations of the St. Louis Union Trust Co. Cases serve as an implied instruction by Congress to us not to reconsider, in the light of new experience, whether those decisions, in conjunction with the Klein Case, make for dissonance of doctrine. It would require very persuasive circumstances enveloping congressional silence to debar this Court from re-examining its own doctrines. To explain the cause of nonaction by Congress when Congress itself sheds no light is to venture into speculative unrealities. * * * Various considerations of parliamentary tactics and strategy might be suggested as reasons for the inaction of the Treasury and of Congress, but they would only be sufficient to indicate that we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle.

"This Court, unlike the House of Lords, has from the beginning rejected a doctrine of disability at self-correction. * * * The real problem is whether a principle shall prevail over its later misapplications. Surely we are not bound by reason or by the considerations that underlie stare decisis to persevere in distinctions taken in the application of a statute which, on further examination, appear consonant neither with the purposes of the statute nor with this Court's own conception of it."

Here, then, is our contributed view that *stare decisis* is a discretionary rather than obstinate rule of judicial conduct. Fairly analyzed, it declares that appellate courts should adhere to precedent save only when due consideration leads to firm conviction that the earlier decision or decisions in scrutiny are wrong as well as unjust, and that more rather than less injustice will flow from perpetuation of that which is found erroneous.

Those rare cases, usually involving the law of property, where the litigant citing an earlier decision or decisions is

shown has having acted in reliance thereon*, have not been overlooked. In such instance the Court, having determined to overrule, may make its overruling decision prospective in effect (*Donohue* v. *Russell*, 264 Mich 217; followed in *Metzen* v. *Department of Revenue*, 310 Mich 622, 629 and *Gentzler* v. *Constantine Vil. Clerk*, 320 Mich 394, 398). In these cases of Park and Dorsey, there is and could be no such claim that the employer—or any interested party—acted or proceeded in any way on strength of Chrysler's ill-starred majority opinion.

We would advert to a further test of that which is pleaded in bar of Chrysler's rejection. Michigan reports of the past 2 decades disclose curious disinterest in this doctrine of legislative ratification of judicially announced interpretation of a statute when the shoe of interpretation is on the other foot. Why, when original liberal constructions of Michigan's other great remedial statute (the workmen's compensation act) were regularly being repudiated here in favor of noose-tightening constrictions of the same unamended statutory provisions, did some Justice not rise to point out that a quiescent and acquiescent legislature had approved the original interpretation or interpretations and so had left the Court powerless to do other than follow its earlier precedents? A perfect example of this failure will be found in the rough life—between Luteran in 1946 and Dyer in 1957**—of *Haller* v. *City of Lansing*, 195 Mich 753 and *Brink* v. *J. W. Wells Lumber Co.*, 229 Mich 35. Dyer tells the story this way:

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*"The picture of the bewildered litigant lured into a course of action by the false light of a decision, only to meet ruin when the light is extinguished and the decision overruled, is for the most part a figment of excited brains." (Mr. Justice Cardozo in The Growth of the Law, p 122).

**The references are to *Luteran* v. *Ford Motor Co.*, 313 Mich 487 and *Dyer* v. *Sears, Roebuck & Company*, 350 Mich 92.

Exhibit A

"Haller (1917) and Brink (1924) were written into our reports by distinguished predecessors composing the so-called Fellows Court. Presumably, they knew more about the background and intended scope of the pivotal phrase—'arising out of and in the course of his employment'—, found in original and present section 1 of part 2 of the workmen's compensation act, than we do. The Court members of that day 'were there,' as the saying goes, and they tell us through Haller and Brink of original and steadfast legislative will that such phrase extend its protective range to a reasonable time and space for the employee to approach and leave the locality or zone of his work." (p 95)

"With changes of personnel here, unfortunate changes of interpretive thought reared themselves. No intervening amendment of the statute brought this about. Inapposite yet contagious notions recorded in Daniel, Hickman and Pilgrim—imported from Massachusetts and renounced this day in Freiborg v. Chrysler Corporation, 350 Mich 104,—descended unnoticed on Haller and Brink and resulted finally in flat repudiation of both." (p 94)

Haller (as noted with detail in *Mack* v. *Reo Motors, Inc.*, 345 Mich 268, 278-280) once was "a leading case in this country"; yet it was too liberal an interpretation of said section 1 for the composition of the Court as it stood between 1946 and 1956. So Haller, having first been questioned in Luteran and then airily cast aside in *Hickman* v. *City of Detroit*, 326 Mich 547, 550, was finally overruled* with no

*Our majority said at the time (*Mack* v. *Reo Motors, Inc.*, 345 Mich 268, 288):

"In view of the many decisions of this Court since the *Haller Case* was decided in 1917, it is apparent that the *Haller Case* has been effectively overruled by the subsequent *Luteran Case* and many others, and that the *Haller Case* has gone 'to the mat of discard'."

word—then or at any other time—for legislative "acquiescence" in Haller's construction of said section 1; as construction which had governed relevant application and administration of said section 1 for at least 29 years.

Are we to understand, from all this, that the asserted aphorism of legislative ratification applies only when the decision to overrule results in a more liberal interpretation of the once-interpreted statute? Let there be forthright answer. For our part the doctrine is and will be recognized only for what it has always been, that is to say, legislative acquiescence is but one of the many considerations by which an appellate court arrives at a determination to follow or overrule an earlier precedent of challenged and doubtful validity. It is a persuasive but not necessarily controlling factor and, in the language of text-amended American Jurisprudence, "must give way to overriding considerations under cogent circumstances." Such overriding considerations are definitely present at this sitting, and no member of the Court is willing or able to defend that which we now overrule.

To conclude: In his opinion Mr. Justice Edwards has appropriately referred to the thoroughly considered and painstakingly documented thesis appearing in current issue of Michigan Law Review (57 MLR December 1958, pp 151 *et seq*). There the reader will find proof that *stare decisis* has never been allowed to stand in the way of necessary and righteous correction of the judicial process by judicial process, and that self-reversal has taken place by order of distinguished judges from as far back as the time of John Marshall. The title is " 'Overruling Opinions' In The Supreme Court." It lends to this opinion an appropriate conclusion (p 183):

> "Here * * * is a discussion of the judicial discretion which leads to overrulings, and a presenta-

> tion of some of the criteria which determine when the exercise of that discretion was 'necessary,' 'justified' or possibly 'unwarranted.'
>
> "Here also is a plea for more definite and expressed overrulings—and a plea for the proposition that it is 'the duty of every judge and every court to examine its own decisions, . . . without fear, and to revise them without reluctance.' For there is nothing wrong with a public confession of error. It is, of course, far more important that the Supreme Court be right than that it be consistent. It is far more important that the law be definite than that discredited and outmoded doctrine be permitted to survive."

By these presents we concur unreservedly in the foregoing opinion of Mr. Justice Edwards.

Smith and Voelker, JJ., concurred with Black, J.

Were this a matter of first impression, I should find myself in agreement with Mr. Justice Edwards' interpretation of the word "establishment" as, also, with that in the dissenting opinion in *Chrysler Corporation* v. *Smith*, 297 Mich. 438. It seems to me, however, that the majority opinion and decision in that case are conclusive of affirmance here, inasmuch as the facts distinguishing that case from this were not treated as essential to the reasoning and decision there. That case was decided in 1941. Since then, the statute and the particular section here in question have been amended several times, but never has the legislature adopted any amendment indicating legislative dissatisfaction with this Court's construction, in Chrysler, of the term "establishment". Where a statutory provision is re-enacted without change in language, it must be presumed that the action was taken in the light of prior judicial construction

placed upon it and with the intent to adopt such construction. *Van Antwerp* v. *State*, 334 Mich 593. When the Supreme Court has placed an interpretation on a statute over a considerable period of years it may indulge the judicial assumption that the legislature has been content with that interpretation in view of its failure to exercise its independent prerogative to restate the provision. *Twork* v. *Munising Paper Co.*, 275 Mich 174, 178.

> "In *In re Clayton Estate*, 343 Mich 101, 107, this Court quoted with approval the principle enunciated in 21 CJS, Courts, § 214, pp 388, 390, as follows:
>
> "'"The doctrine of *stare decisis* applies with full force to decisions construing statutes or ordinances, especially where the construction has been long acquiesced in. * * *
>
> "'"This rule is especially applicable where the construction placed on a statute by previous decisions has been long acquiesced in by the legislature, by its continued use or failure to change the language of the statute so construed, *the power to change the law as interpreted being regarded, in such circumstances, as one to be exercised solely by the legislature.*"' * * *
>
> "To grant the relief requested by the plaintiff would require this Court to exercise legislative prerogatives." (Emphasis supplied.) *Consumers Power Co.* v. *County of Muskegon*, 346 Mich 243, 251.

See, also, cases to same effect from other jurisdictions, cited in *In re Clayton Estate*, 343 Mich 101. For these reasons, I would affirm the judgment of the circuit court.

Carr, J., concurred with Dethners, C. J.

Exhibit B

OPINION OF CIRCUIT COURT

(Filed July 26, 1956)

Certiorari to review determination by the Appeal Board of the Michigan Employment Security Commission.

In addition to the principals in these cases, the following intervened, took part in the proceedings before the court and filed briefs:

Michigan Federation of Labor,
Michigan Employment Security Commission,
Attorney General State of Michigan.

Their respective positions in this matter may be gleaned from the record. No new issues were raised by them or any of them.

The record in the cases at bar contains upwards of 5,000 pages.

All the parties litigant were represented by competent counsel. Extensive arguments were had on all facets of the cases, and comprehensive briefs filed.

There are three related cases before the court for review. Because of the partial interlocking of these cases, a somewhat detailed statement seems desirable to a proper understanding of the issues presented for decision.

The cases are as follows:

1. *Alexander Park, et al. vs Appeal Board, et al.* (Case No. 280,754)

This group of cases consists of appeals by approximately 5,700 claimants who have been denied unemployment compensation by the Michigan Employment Security Commission, the Referee, and the Appeal Board, respectively, by reason of their involvement in a labor dispute, under provisions of Section 29(1)(b) of the Michigan Employment Security Act. These claimants had signed express, written

authorization to the Union, or its authorized representatives, to represent them as their agents before the Michigan Employment Security Commission, the Referee, and the Appeal Board.

The *validity* of the appeals in this group of cases is not challenged, the agent taking the appeals having been duly authorized under Section 31 of the Act. (Emphasis supplied.)

2. *John L. Dorsey, et al. vs Appeal Board, et al,* (Case No. 280,866)

This group consists of approximately 5,800 claimants who did not take appeals themselves, nor did they duly authorize either the Union or anyone else to take appeals in their behalf from determinations by the Michigan Employment Security Commission, the Referee, or the Appeal Board.

The appeals, purportedly taken in their behalf by the Union's counsel, were dismissed by the Referee, or the reason that he, the Referee, held the appeals *invalid.* (Emphasis supplied.)

In the Referee's decision, and, also, in the subsequent Appeal Board proceedings, this group of cases was designated as *LeRoy H. White,* et al, Mr. White's name being first on the list of claimants in the group. It developed, however, that claimant, LeRoy H. White, lived in Ypsilanti, and, hence, was not a resident of Wayne County. Therefore, in appeal from decision of the Appeal Board to the Wayne County Circuit Court, claimants selected the name of the claimant third on the list, i.e., John L. Dorsey, who was a resident of Wayne County.

Claimants in the *Dorsey* group, in the *Park, et al,* group, were held disqualified by the Michigan Employment Security Commission under the labor dispute disqualification

statute, Section 29(1)(b) of the Act. The Referee held, as noted, supra, that since those claimants had not taken appeals themselves, and had not duly authorized the Union or anyone else to appeal on their behalf, the purported appeals filed on a blanket basis by the Union's counsel, were invalid.

With respect to the Dorsey group, the Appeal Board made two findings:

1. On the issue of the validity of the appeals, the Appeal Board held that:

> "Upon this branch of the case it is our opinion that the Referee erred in dismissing their appeals and his decision is thereby reversed."

2. On the second issue, viz., whether this group of claimants was properly disqualified by reason of involvement in a labor dispute under Section 29(1)(b), the Appeal Board, majority (2 to 1) decided:

> "It is also held that the claimants herein are disqualified from receiving benefits for the weeks ending May 16, 23, and 30, 1953, under the provisions of Section 29(1)(b) of the Michigan Employment Security Act."

Union's counsel, Mr. A. L. Zwerdling, petitioned this court for a writ of certiorari in the Dorsey, et al., case (White, et al), assigning error on the decision of the Appeal Board disqualifying the claimants under Section 29(1)(b) of the Michigan Employment Security Act. He did not, however, refer to, nor question, the Appeal Board's reversal of the Referee's decision that the appeals were invalid under Sections 32 and 32-A, and pertinent regulations therein. The writ of certiorari was issued April 15, 1955, in Docket No. 280,866.

Exhibit B

3. *Ford Motor Company vs Michigan Employment Security Commission, Robert A. Hoxie, et al.* (Case No. 280,901).

This group involves essentially the same claimants as are included in the foregoing Dorsey, et al., group. The petition for writ of certiorari filed by the Ford Motor Company expressly assigns error in the decision of the Appeal Board on the issue of whether these appeals were valid.

The reason for the two groups of cases being designated by different headings, is, that in the Ford Motor Company's appeal from that portion of the Appeal Board's decision which relates to the validity of their appeals, the Ford Motor Company designated the case in the name of Robert A. Hoxie, he being the claimant next on the list after LeRoy H. White, having a Wayne County address.

Further particulars follow:

For the purposes of identification, these cases will be referred to as the Parks case, the Dorsey case, and the Hoxie case, respectively.

Further particularizing, as indicated, these cases involve appeals from two decisions of the Appeal Board of the Michigan Employment Security Commission issued April 5, 1955. The Parks case, was appealed by counsel for the appellant claimants; the Dorsey case (also known as the White case), was appealed both by the claimants and the Ford Motor Company. The claimants appeal, viz., case No. 280,866, is designated, John L. Dorsey, et al; the Company's appeal, viz, Case No. 280,901, is under the caption, Robert A. Hoxie, et al.

The Company's appeal in the Hoxie case, challenges the validity of the appeal, viz, the right of counsel, Attorney Abraham Zwerdling, by blanket appeal, to act in the name, place, and stead of a group of claimants, some 5,800 in

number, without, among other things, written authorization from these claimants to so represent them,—it being the contention of the Company that Mr. Zwerdling could not act, lawfully, or factually, both as attorney for, and as a group representative, or agent of the claimants. Also, that the Union, as such, was not a proper party in the case at bar. Nor were the appeals valid because they were taken on behalf of the claimants by counsel (Mr. Zwerdling) retained by the Union. Furthermore, the appeals were invalid for the reason such appeals were not taken by the claimants nor by any authorized agent in their behalf. The Union's counsel asserts that the Union was the agent of the employees by virtue of the membership application and the Constitution of the Union.

On the issue of representation, the Referee held with the Company. As stated, supra, the Appeal Board overruled the Referee and held that the aforementioned group of claimants were properly represented by Mr. Zwerdling, but that these claimants were disqualified for unemployment compensation.

In this connection, it may be further noted that these appeals arose from redeterminations issued by the Michigan Employment Security Commission on October 22, 1953, denying unemployment benefits to the aforementioned claimant-employees of the Ford Motor Company's Mound Road, Highland Park and Rouge area, Michigan plants.

In denying these claims, the Commission found that the employment of the claimants in the weeks ending May 16th to May 30, 1953, inclusive, was due to a stoppage of work in the plants or departments in which they worked,—the stoppage being caused by a strike in the forge plant of the Ford Motor Company in Canton, Ohio.

The Commission took the position that the Michigan and Ohio plants of Ford Motor Company are parts or units

of a single establishment, and found each of the claimants to be directly involved in the labor dispute at the Canton forge plant. Accordingly, as noted, supra, the Commission disqualified claimants for the receipts of benefits for the periods of their unemployment during the aforementioned three weeks, under Section 29(1)(b)(4), of the Michigan Unemployment Security Act.

These appeals were presented and pressed by Counsel, Mr. Zwerdling, who, in presenting the appeals, took the position that he was appearing for the International Union, UAW-CIO (hereinafter referred to as the Union), and for all claimants whose benefit rights in the first instance were the subject of determinations and redeterminations by the Commission. By reason of an assertion by the Union's counsel that he represented the Union and all of the claimants involved, the Commission sent copies of all of the determinations to him. He then made a blanket request for, and received, the redeterminations. Subsequently, he filed a general blanket appeal to the Referee on behalf of all claimants.

A consolidated hearing was had pursuant to Section 33 of the Act before the Referee in the early part of the year 1954.

The record of the hearing before the Referee shows that the claimants involved in this appeal were employed in May, 1953, by the Ford Motor Company at its Mound Road, Highland Park and Rouge area, Michigan plants; that a strike was called on April 20, 1953, at the Ford Motor Canton, Ohio, forge plant, which strike lasted until May 25, 1953; that by reason of this strike, the supplies of essential forgings to certain of the Ford Motor Company's other plants, including those in the State of Michigan and elsewhere, caused a complete cessation of production of Ford and Mercury passenger cars; and the

claimants' unemployment was due to a stoppage of work which resulted from, and was directly traceable to, the Canton plant strike.

On review, the Appeal Board of the Michigan Employment Security Commission made determinations as indicated, supra.

THE PIVOTAL ISSUE OF THE CASE AT BAR IS A DETERMINATION OF THE MEANING OF THE TERM "ESTABLISHMENT" AS USED IN THE MICHIGAN EMPLOYMENT SECURITY COMMISSION.

By reason of its importance in the case at bar, and, more especially, for perusal of the particular language used therein, both the Title of the Act and the Declaration of Policy are herein set forth. (M.S.A. 17.501-17.502, Cum. Supp. 1955).

The title to the initial Act, viz., Act No. 1, Public Acts 1936, Extra Session, reads as follows:

> "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create the Michigan unemployment compensation commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the payment of benefits; to provide for appeals from decisions on claims for benefits, and for referees and an appeal board, to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the congress of the United States of America; to prescribe penalties for the violation of the provisions

of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act."

Declaration of Policy. Sec. 2.

"The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state."

It may be well to note that the language of the Title of the Act, and the Declaration of Policy is broad and general rather than legalistic and definitive in its scope and purpose. It may also be noted that the original Act, as well as the amendatory Acts thereto, contain words of co-operation between the State and the Federal Government.

It may also be noted that, historically, the Unemployment Compensations Act in many states, including Michigan, had their inception about the same time, viz., 1934-

1936; that all the acts are quite similar in language, scope and purpose; that they are patterned, in substantial part, on the English National Insurance Act of 1911, and amendments thereto; that the underlying common purpose of all these acts is, as stated in *Ford Motor Company* vs *Abercrombie, et al.*, (Ga. 1950), 62 S. E. 2d, 209,213:

> "The legislative intent and purpose, that only the involuntarily unemployed whose unemployment is not the result of their own fault, is the foundation upon which the entire act rests;"

It may be further noted that the Michigan Act was patterned, in part, on the English National Insurance Act of 1911, and subsequent amendments thereto. (Statutes 1-2 Geo. V, Chap. 55, Par. 87. Public General Statutes, Law Reports, 1934, 24-25 Geo. V, Chap. 29, Part II, No. 35). *Lawrence Baking Co.* vs *Unemployment Compensation Commission*, 308 Mich. 198, 205; *Chrysler Corp.* vs *Smith*, 297 Mich. 438, 457. (See post in this opinion.)

It may be here stated that the right to unemployment benefits rests wholly on the statute, *Cassar* vs *Unemployment Security Commission*, 343 Mich. 380, 412.

The primary issue, on the basis of the admitted facts, is whether or not Section 29(1)(b) of the 1953 Act can be properly invoked, and is applicable to disqualify the claimants in Michigan who became unemployed as a result of the strike in Ohio.

Section 29(1)(b) of the Act provides:

> "An individual shall be disqualified for benefits:
>
> "For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute *in the establishment* in which he is or was last employed * * *" (Emphasis supplied.)

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For the purpose of showing the evolution of paragraph (4), I append the language of Acts No. 246, P.A. 1943 and No. 360, P.A. 1947, respectively. (It may be noted that paragraph (4) of the present act (Cum. Supp. 1955 M.S.A.) follows the language of the 1947 Act.

Sec. 29(1)(b)(4), in re disqualification for benefits.

Paragraph (4) under subdivision (c) of section 29, of the 1943 Act, which appears for the first time in the 1943 Act, reads:

> (4) "That at any time, there being no labor dispute in the particular establishment or department or unit in which he was then employed, he shall have become unemployed because of a stoppage of work which was directly caused in his particular establishment or department or unit by and solely because of a stoppage of work due to a labor dispute which was then in progress in some other establishment or department or unit of the same employing unit by whom he was then employed."

Sec. 29(1)(b)(4) No. 360, P.A. 1947, reads:

> (4) "That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."

It may be noted that in the 1947 Act, as in the present act, the word "establishment" has been eliminated from paragraph (4).

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For interpretation of paragraph (4), supra, see *General Motors Corporation* vs *Unemployment Compensation Commission*, 321 Mich. 724. (1948).

This brings us to a pivotal question of what is meant by the term "establishment" as used in the aforementioned statute. The following definitions are found in two standard dictionaries:

> "Establishment."
>
> "Permanent arrangement or constitution; organization."

Webster's New International Dictionary, p. 751.

> "Establishment."
>
> "Fixed or settled order of things; constituted order or system, as of government; organization."

The Century Dictionary & Encyclopedia, Vol. III, p. 2009.

Dictionary definitions are not completely controlling, nor, in the present case do they little more than substitute one set of words for another. The meaning of the word "establishment" must be gleaned from the intent of the legislature as such intent is expressed in the statute of which the word "establishment" is a component part.

The precise issue in the case at bar seems to be one of first impression in Michigan, hence, the provisions of the law should be liberally construed. *Auten* vs *Michigan Unemployment Compensation Commission*, 310 Mich. 453, 455.

We are met at the threshold of this issue with the question of jurisdiction, viz., Are employees in the Company's plants in Michigan, in which there is no labor dispute, said employees' unemployment being caused by, and as a direct

result of a labor dispute in the Company's plant in the State of Ohio, within the jurisdiction of a Michigan court, as regards the granting or denying of unemployment benefits, as such jurisdiction is comprehended within the term "establishment," as used in the aforementioned statute of Michigan?

Or, to state the issue in another way: The questions to be resolved is whether or not claimants' unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which they were employed?

It is well-established that the jurisdiction of the courts of Michigan does not extend beyond the boundaries of the State of Michigan. *Stewart* vs *Eaton*, 287 Mich. p. 466,474. At this point, however, it should be kept in mind that all claimants in the three aforementioned cases at bar, were employees of the Company's plants in Michigan,—the cause, only, of these claimants' unemployment being outside the State of Michigan, viz., Canton, Ohio.

It may, also, be noted at this point that the original Michigan Employment Security Commission Act was passed in 1936, and that the Act under which the aforementioned cases at bar were determined, contained certain changes by way of amendment, noted, supra. These latter amendatory changes are of consequence, not alone for the particular language used therein, but also with reference to the application to the case at bar of legal principles of some of the pivotal cases decided prior to these amendments.

The statutory development of the original Act may be found in the following amendments thereto: Act No. 347, P.A. 1937; Act No. 324, P.A. 1939; Act No. 364, P.A. 1941; Act No. 246, P.A. 1943; Act No. 360, P.A. 1947; Act No. 251, P.A. 1951; Act No. 197, P.A. 1954.

It may be further noted that the term "establishment," as used in the Michigan Statute, differs from terms used

to comprehend the same legal or factual area, in statutes and cited cases in certain sister states.

It needs no citation of authority that the term "establishment" together with all other pertinent terms and statutory provisions in the Michigan Employment Security Commission Act should be read in the light of the "declaration of policy" and the social-economic background comprehended within the purposes of the Act, M.S.A. 17,502. It should further be kept in mind that the area in which the Michigan Employment Security Commission Act was, and is, intended to operate, is not static. Furthermore, that the Act was formulated on the theory of an expanding, as well as a shrinking economy, with its intended and attendant mutual benefits and burdens; that the purpose of the Act is to cushion against periods of unemployment; also that unlike "social security" the unemployment benefit fund is made up solely by the employer.

It should further be noted that the Michigan Employment Security Act is not a one-way street for either employer or employee, but is a two-way social and economic thoroughfare on which employer and employee may, within certain prescribed limits, travel, to the purported benefit of both.

As indicated, the Michigan Employment Security Commission Act had its inception in Michigan in Act No. 1, Public Acts of Michigan, Extra Session 1936. "The declaration of policy" set forth therein (Sec. 2) has never been changed. The amendatory Acts have however made definite changes in certain portions of the statute, which changes should be carefully noted.

It may be further noted that Section 29 of the original Act does not contain provision (b)(4) of later Acts,—this provision being added by amendment, Act No. 246,

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Public Acts, 1943. *General Motors Corp.* vs *Unemployment Compensation Commission*, 321 Mich. 604,609.

Coming now to the portions of the Michigan Employment Security Commission Act pertinent to the issues at bar, the following provisions are pertinent:

Sec. 29(1)(b), *supra.*

Par. (4), *supra*, M.S.A. 17.531, Sec. 29(1)(b)(4) M.S.A. 17.542, Section 40:

> " 'Employing unit' means any individual or type of organization, including any partnership, association, * * *" "All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. * * *"

It is but stating the obvious, and in this the Company is not unique, that the Ford Motor Company is, functionally, a highly integrated, extensive industrial enterprise or establishment, of which the forge plant at Canton, Ohio, is as much an integral part as any of its plants in Detroit or elsewhere in Michigan.

It is equally obvious that the International Union UAW-CIO is a highly integrated, comprehensive Union, of which the Canton, Ohio forge plant local Union is as much a part as any of the like plant-unions in Michigan. It is equally obvious that by reason of such Union integration, and the well-nigh compulsory local union membership therein, the benefits as well as the burdens flow to, and are imposed upon its members; that, by reason of contractual relations, there is in the area of employer and employee, an interlocking of interest of the Company and the Union, and that within the area each functions within the ambit of the other.

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To approach the question of the Ford Motor Company enterprise, or the International Union, in its comprehensive interstate organization, from the point of view that such organizations, in the application of their benefits and burdens, stop at state boundary lines is, in my opinion, to do violence to the plan and purpose of the Michigan Employment Security Commission Act, as such purpose is set forth in the aforementioned declaration of policy, M.S.A. 17.502.

If the claimants in the case at bar are eligible for unemployment benefits, it is by reason of the integrated unity of the Ford Motor Company, as such unity is comprehended by the term "establishment" in the Michigan Employment Security Act. By the same token, the claimants were denied benefits by reason of statutory disqualifications. Sec. 29(1)(b)(4).

In my opinion it is neither reasonable nor realistic to hold that the economic circulatory system of a highly integrated industry such as the Ford Motor Company, is, for the purpose of carrying out the applicable terms of the Michigan Employment Security Act, obstructed by state boundary lines. The same may be said of the International UAW-CIO.

In making this observation, the court is not to be understood as disregarding the jurisdictional limitation of the courts of Michigan hereinbefore set forth.

This brings us squarely to the issue of what is meant by the term "establishment," supra, and whether or not the court has jurisdiction of the employees of the aforementioned Ford Motor Company's plants in Michigan in determination of the case at bar. As hereinbefore stated, the issue is, as far as I have been able to ascertain, of first impression in Michigan. That this issue may be determined at this level with finality, the court is of opinion and so finds, that the term "establishment" as used in the Michigan Em-

ployment Security Act is not confined to the state lines of Michigan; that, more specifically, in the cases at bar, the term "establishment" comprehends the Michigan plants, supra, where the claimants were employed and the Canton, Ohio, forge plant where the strike compelling the stoppage of work at the Michigan plants, occurred; that the employees in the Michigan plants, in regard to their status as claimants for unemployment benefits, are within the jurisdiction of the court. Also, these employees are comprehended within the term "establishment" as such term is found within the Michigan Employment Security Act, supra.

In coming to decision, the court has kept in mind the purpose of the Michigan Employment Security Commission Act, as such purpose is set forth in the declaration of policy, as such policy has been interpreted and declared in the Chrysler Corporation case, post.

The unemployment of the men in the Michigan plants was due directly and unequivocally to a stoppage of work caused by a labor dispute in the Canton, Ohio forge plant. Its effect was no less direct than if such work stoppage had occurred in one of the integrated parts of the Ford Motor Company plants in Michigan. Nor would, or is, the jurisdiction of the International Union in respect to employees in Michigan vitiated, or cut off, by state boundary lines, by reason of the strike occurring outside the jurisdiction of the state.

Cause and consequence are reciprocal legal brothers. Nor are they, in highly integrated industry such as the case at bar, separated by state boundary lines. In my opinion and I so find, jurisdiction in the case at bar is not determined by the place of the labor dispute in Canton, Ohio, but by the situs of the effect of the labor dispute, viz., the place of employment of the employees in Michigan, who seek unemployment benefits, and who, by their required member-

ship in the Union, are component parts of the employee Union family.

In making this observation, the court is not to be understood as giving consideration to the merits of the labor controversy. Such is not the province of the court. *Lawrence Baking Co. vs Unemployment Compensation Commission*, 308 Mich. 198, 208.

It is the function of the court to declare the law, not to make it. In so declaring and interpreting the law, the court gives full weight to the legislative enactments, as such intent is found within the framework of the statute. To do this, the court must, and in the case at bar the court does, weigh such intent against the social and economic background which gave birth to such legislation.

In support of this conclusion, supra, the court is of opinion and so finds, that the germ and pattern of jurisdictional authority in the cases at bar are found within *Chrysler Corporation vs Smith*, 297 Michigan, page 438. It may be kept in mind that the Chrysler case was decided in 1941, prior to the enactment of Act No. 246, Public Acts 1943, and that the 1943 Act contained, for the first time, an important addition to the statute, Par. 4 of Section 29(1)(b).

The Chrysler case involved the matter of unemployment benefits to about 50,000 employees of said Corporation. The Chrysler Corporation maintains and operates, nine essential coordinated plants in the Detroit area. A labor dispute actively in progress in the main plant stopped work and occasioned unemployment of the aforementioned employees in all of the Chrysler plants.

The pivotal issue centers in the meaning of the term "establishment."

While it is true that the Chrysler case involved separate plants within the State of Michigan, the court did, however,

hold such separate plants to be one unit, comprehended within the term "establishment," thus making the "functional integration" test, the rule in Michigan. On this point, in sustaining the finding of the Appeal Board of Michigan Unemployment Compensation Commission, the court spoke as follows, page 448:

> "The main question is whether, under the legislative employment of the term 'establishment' in section 29, subd. (d), of the act, the units constituting the work production system set up by the corporation should be held separate 'establishments' or, as a whole, an 'establishment.' An 'establishment,' under the simplest definition and common-sense understanding, is merely something established. The purpose and use of the creation, if to accomplish an end in which all units are participants in bringing it about, constitutes the units, so synchronized and employed by the Chrysler Corporation in accomplishment of a common end, an 'establishment' within the meaning of the term as employed in the act."

Further quoting with approval from a Wisconsin case, *Spielman* vs *Industrial Commission*, 236 Wisconsin, 240, the Michigan court said, page 449:

> "The plants are about 40 miles apart, and the bodies taken from one plant to another by trucks operated by employees of the corporation. * * *" "that although the two plants were 40 miles apart, they were just as much a single establishment for the manufacture of automobiles as it would have been had they been in two buildings adjacent to each other."

The court affirmed the holding of the Commission in denying compensation on the ground that the Milwaukee and Kenosha plants constituted an "establishment" within the meaning of the statute, because of their "physical proximity, functional integrality, and general unity."

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The Michigan court further stated, page 451:

> "We hold that the Dodge main plant and the mentioned synchronized units constitute one 'establishment' within the meaning of that term as employed in the act, and claimants are disqualified from unemployment compensation by reason of the fact that their claims are based upon unemployment during a period in which a labor dispute, in which they were directly involved, was in active progress, and caused stoppage of operations in the establishment where they were employed." (See, post, Appendix A, in re Chrysler case.)

The most comprehensive discussion of the term "establishment" by the courts in Michigan, is found in the Chrysler case. Likewise, one of the most comprehensive discussions of the term, "establishment" by courts without the state of Michigan is found in the Nordling case, in which case the court spoke, in part, as follows:

> *Nordling, et al vs Ford Motor Company.*
> (Minn.) (1950) 42 N. W. 2d, p. 576.

In this case the employees of a Ford Motor Company assembly plant located in St. Paul, Minnesota, filed application for unemployment benefits by reason of a shut down caused by a strike in the Michigan Rouge plant of the Ford Motor Company. The issue centered in the interpretation of the term "establishment."

The court spoke as follows:

P. 582.

> "In our employment and security law, the legislature did define many of the terms used. Par. 268.04. It could have likewise easily defined the term 'establishment,' which we are now called upon

to construe. It did not do so. It therefore becomes our duty to determine what meaning the legislature intended to ascribe to the term involved."* * *

P. 583.

"Relator relies principally upon *Spielmann* vs *Industrial Comm.*, 236 Wis. 240, 295 N.W. 1, and *Chrysler Corp.* vs *Smith*, 297 Mich. 438, 298 N.W. 87, 135 A.L.R. 900."

"In the *Spielmann* case, it appears that the Nash-Kelvinator Corporation was engaged, among other things, in manufacturing automobiles. It owned plants in Milwaukee, Racine, and Kenosha, Wisconsin. The Milwaukee plant was engaged exclusively in manufacturing bodies for automobiles. The Kenosha plant was devoted exclusively to the manufacture of other parts and to the assembling of the completed cars. * * * The two plants were approximately 40 miles apart. The employees of the Kenosha plant went on a strike because of a labor dispute, and this resulted in the closing of the Milwaukee plant. The court upheld the commission in denying unemployment benefits to the employees of the Milwaukee plant, holding that both were part of a single establishment. The Wisconsin statute is for all practical purposes similar to ours. In affirming the industrial commission, the court based its decision, as did the commission, on the ground that the two plants constituted an 'establishment' within the meaning of the Wisconsin statute * * * 'because of the physical proximity, functional integrality and general unity' of these plants."

"In the *Chrysler* case, the facts were quite similar. The Chrysler Corporation, in manufacturing automobiles, maintains and operates nine essential, coordinated plants in the Detroit, Michigan, area. All the units are within 11 miles of the main plant.

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A labor dispute in the main plant stopped work in the others. Claims for unemployment compensation were filed under the Michigan act. The disqualifying provisions of the Michigan act followed substantially Par. 5(d) of the act proposed by the Social Security Board, except that the word 'establishment' is used alone instead of the words 'factory, establishment, or other premises.' The court followed the Speilmann case, holding that the employes were disqualified, two justices dissenting."

P. 585.

"* * * In reversing, the court of appeals of Maryland, distinguishing the *Spielmann* case, said, 189 Md. 250, 55 A. 2d 694: 'Comparison with the facts in the *Spielmann* case shows the absence of evidence that the Garfield and Baltimore plants, because of 'functional integrality,' 'general unity' or 'physical proximity,' constitute a single 'establishment.'" * * * "It would be futile to attempt to fix a precise limit (whether 2000 miles, or more or less) of 'physical proximity.' It is sufficient that in the ordinary use of words a plant at Garfield and one at Baltimore would not be called one 'establishment' and facts are lacking which might give a special and unusual application to the word 'establishment.'" * * * "At all events the evidence is sufficient to support the Board's finding that the Garfield and Baltimore plants were not one 'establishment.'"

I have also examined many other cases. (See post.) These authorities show two well-defined lines of decision. These two divergent lines of decision are wrapped up in the Chrysler and the Nordling cases, respectively, and the many authorities cited therein. These two cases will be treated as controlling. Neither is completely in point with the case at bar. This difference is found in the language

of the unemployment compensation statutes, difference in factual statute, but more particularly, difference in approach to, and, in interpretation of the statutes by the courts of last resort. However, there is a very definite common thread running throughout the several cited cases dealing with many of the issues presented therein. The rule in Michigan is the "functional integration" test. The Nordling case, in disagreement with the Michigan court, stresses other features.

By reason of the persuasive nature of the Chrysler case and the Nordling case, and the legal principles enunciated therein, and for convenience of reference there... I quote from them in extenso. (See Appendix "A" post.)

(It is interesting to note that decision in the Nordling case, on one of the pivotal issues in the case at bar, follows the dissenting opinion in the Chrysler case. It may be further noted that while all of the authorities seem to agree on the general purpose of the unemployment compensation statutes, they differ in approach to the issues, and, more particularly, on the scope and meaning of the term "establishment," and to a lesser degree, to other qualifying statutory terms used therein).

As indicated, supra, the Michig... 'ct is patterned on the English National Insurance ... of 1911, and acts amendatory thereto.

By reason of the general background of the English Act and its persuasive relevancy to the case at bar, I append the following as a part of this opinion:

I have examined the English Act, supra, particularly the "unemployment benefit" section. The act contains such words as premises, place, factor, workshop, etc.

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I have also examined some of the adjudicated cases. Few of these cases seem to have reached the high court of Britain. Likewise, few are to be found in the nisi prius reports.

The King vs *Hudson*, Vol I. King's Bench Division, Law Reports (1915) p.p. 133, 145. This case involved the question of whether or not "sawmilling" is an insured trade. While this case is not directly in point, it does give flavor to the judicial approach to interpretation of the statute. Among other things, the court said:

> * * * "that although the word 'trade' may be used in its popular and ordinary sense—yet the word may, to some extent, be in some respects misleading, because * * * regard should be had to the nature of the work in which the workman is engaged rather than to the business of the employer by whom he is employed."

Appeal of Gardner, Re Maschak, Re Tyrrell, King's Bench Division, (1937) Vol I. All E.R. 1938, p. 20, 22.

This case involved the meaning of the term "employment" under the Unemployment Insurance Act, 1935. The court said:

> "One has to look at the nature of his employment as a whole, and to decide according to that."

An abundance of decisions may be found in "Decisions by the Umpire," U.I. Code 7, Part III, May, 1939, Ministry of Labor.

These reports all seem to hold, in re disqualifications for benefits, that three conditions must exist, viz:

1. Trade dispute. 2. Stoppage of work. 3. Lost employment by reason of that stoppage.

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Furthermore, the dispute must be at the premises or place where the claimant is employed. However, in interpreting the term, "premises" the reports say the term does not limit to a single locale, but may comprehend different places of employment, thus planting decision on a rule later set forth in the Chrysler Corporation case.

It is relevant to note from the authorities examined, that the English cases show the same general trend of unemployment benefit issues, which, in certain areas, of application and interpretation, confront American courts, commissions and appeal boards; and while British industry is more localized than in the United States, and the rules and regulations in regard to unemployment benefits are spelled out in more detail than with us, yet I think it a fair inference from the decided cases that the trend of decisions within the statutory frame work is that of broad application.

It may also be noted that the duly appointed "Umpire," while functioning within the prescribed statutes, rules and regulations, is well-nigh supreme in his appointed field. This relevant fact is reflected in the supremacy of the Michigan Appeal Board on issues of fact, in review by the Circuit Court. U. S. A. 17,540, Sec. 38. And, while not pertinent to decision in the case at bar, it may be observed that so far as my research has carried me, no such oblique representation as the Hoxie case is to be found in the English reports.

Regarding the issue of the *validity* of Mr. Zwerdling's representation of claimants in the Hoxie case, supra, the court is of opinion and so finds, that the issues as presented in the case at bar, are academic. The Appeal Board held that Mr. Zwerdling had a right to so represent the claimants. He, therefore, cannot be heard to complain. The Appeal Board further found that the claimants so

represented by Mr. Zwerdling were disqualified for unemployment benefits. Hence, it follows that the Ford Motor Company cannot complain. (Emphasis supplied.)

It is obvious that any opinion which the court might render in the Hoxie case would be purely gratuitous, and if given, obiter dicta. The issue in the Hoxie case is for another day.

On certiorari the circuit court is subject to the provisions of Sec. 38 of the Employment Security Act, M.S.A. Cum. Supp. 1953, 17.540. *Cassar* vs *Employment Security Com.* 343 Mich. 380, 403; *Palmer* vs *Unemployment Compensation Commission*, 310 Mich. 702.

M.S.A. 17.540, Section 38:

> "—Review by Circuit Court. * * *
>
> "The findings of fact made by the appeal board acting within its powers if supported by the great weight of the evidence, shall, in the absence of fraud, be conclusive, but the circuit court of the county, in which the claimant resides or in which the employer's principal place of business in Michigan is located, if no claimant is a party to the case, or the circuit court for the county of Ingham shall have power to review questions of fact and law on the record made before the referee and the appeal board involved in any such final decision, but said court may reverse such decision of said appeal board upon a question of fact only if it finds that said decision of the appeal board is contrary to the great weight of the evidence: * * *"

To sum up, the court is of opinion and so finds, that viewing the many cited authorities in the light of their "declaration of policy," as such policy finds expression in the Michigan Statute, M.S.A. 17.501 et seq., and corresponding statutes in sister states, including the English

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Act, supra, the principles set forth in the Chrysler case and of courts in other states supporting the Chrysler case, are more consonant with the intent and purpose of such unemployment benefit statutes, as well as with the modern trend of highly integrated industry, such as the case at bar, than those of contrary holdings such as is instanced in the Nordling case.

Also, the court is of opinion, and so finds, as a matter of law, that the term "establishment" as found in the Michigan Employment Security Act, supra, is a comprehensive term, not limited in "functionally integrated organizations" such as the Ford Motor Company, in determination of eligibility for unemployment benefits, to state boundary lines, the subject matter, only, of the controversy, viz., the claimant-employees of Michigan being necessarily within the jurisdiction of the State of Michigan.

> "A statute is prima facie operative as to persons or things within the territorial jurisdiction of the law making power which enacted it." 50 Amer. Jurisprudence, pp. 508-511.

Therefore viewing the decision of the Appeal Board in the light of the governing statutes and the authority of the court of review under M.S.A. 17.540, Section 38, supra, the court is of opinion and so finds, that the findings of fact of the Appeal Board in the cases properly before the court, are well-supported by the greater weight of the evidence, and that such decision of the said Appeal Board is not contrary to the great weight of the evidence. Therefore, the decision of the Appeal Board is affirmed.

Writs dismissed.

/s/ John V. Brennan
Circuit Judge.

Dated: July 26, 1956.

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APPENDIX "A".

The following cases are appended for the purpose of convenience of reference, and more particularly, for showing the approaches of the various courts to the interpretation of the Unemployment Compensation Statutes.

It may be noted in the appended cases that Massachusetts, New Jersey and Kentucky cases follow the Nordling case, while the Wisconsin, the Georgia and the Alaska fishing case follow the Michigan rule.

Chrysler Corporation vs Smith, 297 Mich. 438.

The most comprehensive discussion of the term "establishment" by the courts of Michigan to be found in law books, is that of the Chrysler Corporation case. In addition to statements by the court, opinion, supra, the following, by reason of its scope, is appended.

Mr. Justice McAllister, in a dissenting opinion spoke as follows:

P. 457.

> "Our law of unemployment compensation was modeled after the English statute which was adopted by Parliament 21 years ago (10-11 Geo. V, chap. 30 (1920)). One of the sections of that enactment, as later amended (14-15 Geo. V, chap. 30, Par. 4 (1924)), provides that an employee shall be disqualified from benefits if he has lost employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop, or other premises in which he was employed, unless such employee proves that he was not 'participating in or financing or directly interested' in the trade dispute which caused the stoppage of work. It will be seen that, in this particular of disqualification, our legislature

adopted, in our statute, the identical language of the English statute. * * *"

P. 458.

"* * *All of the decisions of the court of referees and the British umpire on this question have invariably held that an individual is directly interested in a dispute when his wages, hours, or conditions of work will be affected favorably or adversely by the outcome, and a claimant is nonetheless directly interested even though he does not know until after the settlement of the dispute whether his wages will be affected, provided, however, that the wage question did not arise after the settlement of the dispute."

"The fundamental rule of construction of a statute is that the court shall, by all aids available, ascertain and give effect to the intention of the legislature."* * *

P. 461.

"Perhaps the most important question in this case is the construction to be given to the word 'establishment' as used in the statute. * * *"

"In arriving at a meaning of the term 'establishment,' dictionary definitions are of practically no assistance because of the many, various, and general meanings set forth. Likewise judicial interpretations with regard to this term in other statutes and cases are so limited in scope as to be of no value in this controversy. In order to discover the meaning of the term as intended by the legislature, recourse must be had to the object and purpose of the law." * * *

"Section 2 of the act sets forth the declaration of policy of the legislature as follows:

'The legislature acting in the exercise of the police power of the State declares that the public policy of the State is as follows: Economic insecurity due to unemployment is a serious menace to the health, mor-

als, and welfare of the people of this State. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this State. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.' "

P. 463.

"* * * The legislature did not say that numerous factories constitute one establishment for the purpose of the act. It did, however, define such terms as 'benefits,' 'remuneration,' 'wages,' 'calendar quarter,' 'week,' 'base period,' 'benefit year,' 'employer,' 'employing unit,' 'employment,' 'partial unemployment,' 'total unemployment,' and 'employment office.' It could have defined 'establishment.' But since it did not, we are not persuaded that this term should be defined and construed by us in a way that would obliterate the expressed object of the statute, and wipe out the declaration of policy as stated by the legislature."

P. 465.

"* * * The court concluded its discussion of this question by stating that the meaning of the word 'establishment' was to be drawn from the whole act, 'rather than from so insignificant a thing as a single proposition.' "

Exhibit B

P. 467.

"Furthermore, in section 40 of the act it is set forth:

'All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this act.'

"Obviously, this provision contemplates a single employer with several establishments." * * *

P. 468.

"* * * The conclusion, therefore, would seem inevitable that the provisions of the act in no way contemplate that integration of plants is the sole criterion for the statutory interpretation of the word 'establishment'—and that several integrated plants are one establishment while several unintegrated plants are several establishments."

P. 469.

"It is our conclusion from the foregoing that the several plants of appellant Chrysler Corporation must be held to be separate establishments within the meaning of our statute, and in this determination we concur with the conclusion of the referee, the appeal board, and Judge Carr, who affirmed their decision." * * *

"In the history of the legislation, it is of interest to note that under the original English statute 10-11 Geo. V, chap. 30, par. 8-(1) (1920), employees were disqualified from benefits if the stoppage of work resulted from a labor dispute, whether or not such employees participated therein, and regardless of the fact of whether they would be interested in the result of the dispute." * * * "This provision was, however, changed in 1924 (14-15 Geo. V, chap. 30, Par. 4-(1),

permitting compensation unless the employee participated in, financed, or was directly interested in the dispute." * * *

Mr. Justice Boyles, concurring in part, wrote,

P. 477.

'Fundamentally, the foregoing applies to the Chrysler employees in all of the plants of the company that were closed down when no longer fed with parts or material from the main plant or by the transportation system of the company. I am compelled to reach the conclusion that 'establishment' includes all of the integrated plants of the company in this operating area." * * *

Nordling case, supra.

P. 586.

Were it necessary to distinguish the Spielmann and Chrysler cases from the case now before us, we believe that there are distinguishing facts. Under the Wisconsin statutes, contributions of employers are apparently kept in separate accounts for each employer, and benefits to employes are charged to that account alone, the state acting merely as a trustee for the employer. In both the Spielmann and Chrysler cases, all the separate factories are located in one state, whereas in our case the strike took place in a factory in one state and the branch involved in this litigation is located in another. This distinction is pointed out by Mr. Justice McAllister in his dissenting opinion in the Chrysler case, where he said; 29, Mich. 468, 298 N. W. 98: 'Different integrated plants owned by the same corporation may have as employee representatives different bargaining agents, and it is not claimed that the action of a bargaining agent for certain employees can bind other employees employed in a different plant and represented by a

different bargaining agent. * * * No contention is made that integrated plants of different owners in the same State, or integrated plants owned by the same corporation operating under the laws of different States, or integrated plants in the same State or different States in which employees are represented by different bargaining agents, should be considered one establishment within the meaning of the act. The conclusion, therefore, would seem inevitable that the provisions of the act in no way contemplate that integration of plants is the sole criterion for the statutory interpretation of the word 'establishment'—and that several integrated plants are one establishment while several unintegrated plants are several establishments."

"Rather than distinguish the cases on differing facts, we prefer to place decision on the broader ground that we believe that the test of functional integrality, general unity, and physical proximity should not be adopted as an absolute test in all cases of this type. No doubt, these factors are elements that should be taken into consideration in determining the ultimate question of whether a factory, plant, or unit of a larger industry is a separate establishment within the meaning of our employment and security law. However, there are other factors which must also be taken into consideration." * * *

P. 587.

"Proximity is equally unsatisfactory. In order to apply this factor, what distance shall be considered short enough to constitute proximity?" * * *

"Nor is general unity of itself at test. Our statutes recognize that the same employing unit may maintain two or more separate establishments within the state. Par. 268.04, subd. 9. It might be argued that the legislature had in mind separate establishments which are not related in any way, but the legislature did not so state and we do not believe it can be read into the statute." * * *

Exhibit B

"If, then, there tests standing alone do not suffice, is it a combination of all of them which makes them sufficient? If one is lacking, are the others sufficient, or must they all concur? We believe the better rule to be that these factors, together with other facts, must be taken into consideration in determining whether the unit under consideration is in fact a separate establishment from the standpoint of employment." * * *

P. 587.

"Under Par. 5(d) of the act proposed by the Social Security Board and under our original act, the unit of employment within which the labor dispute must exist in order to disqualify was designated as the 'factory, establishment, or other premises at which he is or was last employed.' " * * *

"We are inclined to believe that in our original act the word 'establishment' was intended to include those places of employment which could not be classified as a factory; that in the amendment the legislature concluded that the term 'establishment' was inclusive of factory and all other types of employer units; and that there was no further need to use the word 'factory.' " * * *

P. 588.

"The term 'establishment' as used in our amended act should be given no broader meaning than it had in the original act, except that it now includes 'factory' and 'other premises' set out separately in the original act. Our act, patterned after the act proposed by the Social Security Board, is in turn patterned after the British National Insurance Act of 1911 (1 & 2 George V, c. 55, part II, Par. 87), which was amended in 1935 (25 George V, c. 8, part III, Par. 26). Under both the 1911 and the 1935 British acts, disqualification is based upon a work stoppage due to a trade dispute at the 'factory, workshop or other premises' * * * The only substantial change in the language of our original act from the British act was that the word 'establishment' was substituted for 'workshop.' "* * *

Exhibit B

"We believe that the solution of the problem lies in determining from all the facts available whether the unit under consideration is a separate establishment from the standpoint of employment and not whether it is a single enterprise from the standpoint of management or for the more efficient production of goods. If we approach the matter from the standpoint of employment rather than management, there is no difficulty in holding that the director's findings and order are amply sustained by the evidence."

Ford Motor Co. vs Abercrombie, et al. Ga. 1950; 62 S. E. 2d, 209.

P. 211.

"The Ford Motor Co. was involved in a labor dispute at its assembly plant in Dearborn, Michigan, and the employees at its parts-producing plant, also in Dearborn, went out on a strike in sympathy with the assembly employees, which resulted in a work stoppage at its assembly plants throughout the United States. This work stoppage resulted in unemployment of employees of that company at Hapeville, Georgia, and the main and only question involved is whether or not these employees are eligible for unemployment compensation under the Georgia law. The claimants for unemployment compensation are members of a local union which holds its charter from the International Union, United Automobile Aircraft and Agricultural Implement workers of America, UAW-CIO, the bargaining agent for all the employees of Ford Motor Company throughout the United States. * * * Under the constitution of the International Union each member of every local is a member of the International Union and is bound by the provisions, and the International Union is constituted the exclusive authorized agent of every employee for the execution and negotiation of employment contracts;

Exhibit B

P. 213.

* * * The cardinal rule to guide the construction of law is, first, to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose.

* * * The legislative intent and purpose, that only the involuntarily unemployed whose unemployment is not the result of their own fault, is the foundation upon which the entire act rests; and that intent and purpose runs irresistibly through every paragraph and sentence of the whole law and is supreme and controlling in the construction of all paragraphs and sentences. This cardinal rule has been uniformly adhered to by this court.

P. 214.

* * * The particular words of this section which form the basis of this controversy and which we must construe are 'factory, establishment, or other premises.'

* * * Failure to function upon the part of either (Hapeville and Dearborn plants) would defeat the single objective of both, which is manufacturing 'Fords.' The Hapeville assembly plant and the Dearborn parts-producing plant where the strike occurred are not separate but are inseparable, each depending upon the other for the functions assigned to it in order to complete the manufacturing processes essential to making Ford automobiles. If the two were located in the same building, there could be no question but that they would constitute one factory engaged in making one article. It cannot be held on any basis of reason and logic that the mere separate locations, regardless of the distance, of these indispensable functions do and could change them into two separate factories, establishments, or other premises.

Exhibit B

* * * Both the employer and these employees acting through their agent, the International Union * * UAW-CIO, regarded the Ford assembly plant and the parts-producing plant as one factory, establishment, or other premises, and as being commonly conducted as such when they executed the contract of employment. * * * By that contract both parties recognize and treat all plants as a single business and that all employees were to work in that single business. * * *

P. 215.

We therefore hold that the Hapeville plant, at which the claimants were employed, and the Dearborn parts-producing plant, where the strike occurred and which compelled cessation of work at the Hapeville plant, were inseparable and indispensable parts of one and the same 'factory, establishment, or other premises' as contemplated by those terms as employed in the act now being construed.

Our construction accords with that placed upon the Michigan statute in *Chrysler Corp.* vs *Smith*, 298 Mich. 438, and the Wisconsin statute in *Spielmann* vs *Industrial Commission*, 236 Wis. 240. In each of the cited cases the law contained a disqualifying clause similar to our own, with the exception that the words in our law, 'factory, or other premises' were omitted. Both cases involved claims to unemployment compensation by employees of one plant resulting from a strike in another plant located on separate premises, but all engaged in the manufacture of the same automobile, and in each case the claims were denied."

General Motors Corporation vs Unemployment Compensation Commission (Claim of Rose) 321 Michigan, 724, 728.

This case involved the interpretation of Par. (4) subdivision (c) Section 29 of Michigan Employment Com-

pensation Commission. The court, in reversing a former finding, (*General Motors Corp.* vs *Unemployment Compensation Commission—Claim of Rose*, 321 Mich. 604) spoke as follows:

P. 728.

> "Under the conditions specified in paragraph (4), subdivision (c), of section 29, if established, the legislature has provided that the employee, as a matter of law, is 'directly involved' in the labor dispute; and by reason of its being established that the employee is thus 'directly involved' in the labor dispute he is disqualified for receiving unemployment benefits. It follows in the instant case that under paragraph (4) of subdivision (c) appellant was 'directly involved' and in consequence thereof he was disqualified from receiving unemployment compensation."

Spielmann vs Industrial Commission, et al., 236 Wis. 240; 295 N. W. 1. (1940).

Hamkins vs *Same.*

Milkent vs *Same.*

This case involves the question of unemployment compensation by three men, one of whom was plaintiff Spielmann.

The facts are, in substance, that the defendant Nash-Kelvinator Corporation is engaged in a variety of manufactures, among them the manufacture of Nash automobiles. It owns plants in Milwaukee, Racine and Kenosha, all in Wisconsin. A strike occurred in the Kenosha plant causing a shut down in the Kenosha, the Milwaukee and the Racine plants.

Plaintiff Spielmann was employed in the Milwaukee plant, plaintiffs Hamkins and Milkent, in the Kenosha

plant. All three plaintiffs lost employment by reason of the shutting down of the plant in which they were respectively engaged. They applied to the Industrial Commission for unemployment compensation under Ch. 108, Wis. Stats.

The Commission denied compensation to plaintiffs because it considered that they were ineligible under sec. 108.04(5)(a) of the Act, which reads:

> "An employe who has left (or * * * lost) his employment with an employer because of a strike or other bona fide labor dispute shall not be eligible for benefits from such * * * employer's account for any week in which such strike or other bona fide labor dispute is in active progress in the *establishment* in which he is or was employed." (Emphasis supplied.)

The Industrial Commission, in denying compensation under the statute, held that the Milwaukee and Kenosha plants constituted an "establishment" within the meaning of the statute because "of the physical proximity, functional integrality and general unity" of these plants.

The court in sustaining the conclusion of the Commission, and the judgment of the circuit court, stated, p. 5:

> "The meaning of the word 'establishment' is to be drawn from the whole act rather than from so insignificant a thing as a single proposition. * * * In these cases, (Hamkins and Milkent) the plants of the company in Racine and Kenosha were found to constitute a 'single establishment' within the meaning of sec. 108.04(5)(a) Stats. They were so found in view of their 'physical proximity, functional integrality and general unity.' Obviously as to 'physical proximity' if under the circumstances of the Spielmann case the forty miles distance between Milwaukee and Kenosha did not defeat 'physical proximity,' the ten miles between Racine and Keno-

sha did not. The findings of 'functional integrality and general unity' in these cases rest in facts somewhat different from those involved in the Spielmann case, but the bearing of these facts on 'functional integrality and general unity' is precisely the same."

Ford Motor Co. vs Division of Employment Sec. et al. Mass. (1951). 96 N. E. 2d, page 859.

This case involved the question of compensation benefits for employees in a Massachusetts plant where the Massachusetts plant was shut down due to failure to receive parts because of a strike at Michigan plants. The court, in following the rule laid down in the Nordling case, spoke as follows:

P. 860.

"The issue involves the construction of C.L. (Ter. Ed.) c. 151A, Par. 25, as appearing in St. 1941, c. 685, Par. 1, which provides that 'no benefits shall be paid to an individual under this chapter for * * * (b) Any week with respect to which the director finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he was last employed' * * * ".

P. 861.

"* * * It is admitted by all the parties that the reason the claimants were unemployed was that assembly parts were not coming to the Somerville plant due to the strike in the Dearborn plant. It therefore follows that the claimants' unemployment was due to a stoppage of work which existed because of a labor dispute. The issue, however, is whether the stoppage and the labor dispute were at the factory, establishment or other premises at which the claimants were last employed. * * * The appellant

corporation contends that the word 'establishment' should be interpreted to mean a business where all of the departments of a company involve manufacturing operations which are inter-related and that, inasmuch as the Ford Motor Company is functionally an integrated unit, its plants, irrespective of how distantly separated, should be considered as a single establishment." * * *

"The employer contends that 'on the facts found by the board of review and on uncontradicted evidence before the board' the Somerville and Dearborn plants were 'so functionally integrated that under the true intendments' of Par. 25 there was one 'establishment' at which there was a labor dispute that caused a work stoppage and at which the claimants were last employed. This argument seeks to substitute a test of functional integration for the limited statutory disqualification which bars benefits to an individual only where there is 'a stoppage of work * * * because of a labor dispute at the factory, establishment or other premises at which he was last employed.' The Board of review in substance has found that there was no labor dispute at the Somerville plant." * * *

P. 862.

"We are of opinion that the findings of the board was in accordance with the requirements of the statute." * * *

P. 863.

"* * * From this history we deduce that in c. 151A, as enacted in 1935, 'establishment' meant 'place of employment'; and that in this respect no change was intended by the longer expression, 'factory establishment or other premises,' introduced in 1937. See *Nordling* vs *Ford Motor Co.*, Minn., 42 N. W. 2d 576, 587."

Exhibit B

"* * * There have been three cases in courts of last resort arising out of the labor dispute with which we are concerned. Two of the decisions were favorable to the award of benefits to individuals employed at local plants who experienced a stoppage of work in consequence of the strike at the Michigan plants. *Nordling* vs *Ford Motor Co., Minn.*, 42 N. W. 2d 576; *Ford Motor Co.* vs *New Jersey Department of Labor & Industry*, 5 N. J. 494, 76A. 2d, 256. In the third the claimants were unsuccessful. *Ford Motor Co.* vs *Abercrombie*, 207 Ga. 464, S. E. 2d 209."

"Other decisions in courts of last resort are distinguishable." * * *

"* * * On the other hand, cases in two courts which denied benefits, although arising under the 'establishment' form of statute, may in their implications be opposed to the claimants. *Chrysler Corp.* vs *Smith*, 297 Mich. 438; *Chrysler Corp.* vs *Unemployment Compensation Commission*, 301 Mich. 351; *Spielmann* vs *Industrial Commission*, 236 Wis. 240."

Ford Motor Company vs New Jersey Department of Labor & Industry, Division of Employment Security, Board of Review, et al. New Jersey (1950), 76 At. 2d, 256.

P. 257.

The issue in this case is whether certain employees of the Ford Motor Company at its New Jersey assembly plant in Edgewater and Metuchen are by force of R.S. 43:21-5(d), N. J. S. A., disqualified from unemployment compensation by reason of a shut down in the New Jersey plants due to a labor dispute in B Building, Rouge plant, Michigan. The court spoke as follows:

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P. 258.

"The essential inquiry concerns the meaning of phrase 'factory, establishment, or other premises.' "

P. 260.

"It is the insistence of Ford that the New Jersey assembly plants 'are so functionally integrated and synchronized with the Michigan plants as to constitute a single establishment' within the intendment of R.S. 43:21-5(d), N.J.S.A., and therefore the stoppage of work at these plants was due to a disqualifying labor dispute." * * *

"If 'establishment' be given the broad significance urged by Ford, then the words 'factory' and 'other premises' would have no meaning whatever. It is to be presumed that the Legislature has not made use of superfluous words." * * *

P. 261.

"Appellant cites in support of the contrary interpretation *Chrysler Corporation* vs *Smith*, 297 Mich. 438; *Chrysler Corp. vs Appeal Board of Michigan Unemployment Compensation Commission*, 301 Mich. 531. (1942) Certiorari denied, 317 U. S. 635. 63 S. Ct. 87 L. Ed. (1942) and *Spielmann vs Industrial Commission*, 236 Wisc. 240. But the cases are not in point. There, 'establishment' alone was used to define the statutory class; and there were geographical proximity and other factors which in the judgment of the court made the totality of members one 'establishment,' so that a labor dispute at one plant would include all as a unitary whole."

"Here, geographical separation and the nature of the function combine to make the New Jersey plants distinct establishments within the intendment of the statutory provision under consideration." * * *

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P. 262.

> "* * * Physical place is the major element in this definition. The sense of the phrase 'factory, establisment, or other premises' is revealed by the provision of subsection (d) of R.S. 43:21-5, N.J.S.A.," * * *
>
> "* * * The use of the word 'premises' also suggests the concept of an employment unit within the State."

Ford Motor Co. vs Kentucky Unemployment Compensation Commission, et al. Ky. (1951), 243, S.W. 2d 657.

This case involves the question of whether or not the employees of Ford assembly plant at Louisville, Kentucky, which was closed by reason of a strike in the River Rouge, Michigan plant, are entitled to unemployment compensation.

The court, in following the rule laid down in the Nordling case, spoke as follows:

P. 659.

> "Since we have decided that the Louisville workers were not directly on strike and had no power to avert the Michigan strike, the next question is whether the far-flung Ford Motor Company is the 'establishment' referred to in KRS 341.360 (1) or whether that term refers in this case to the Ford plant at Louisville. * * * Unfortunately, the term 'establishment' is not one of the many terms defined in the Act. The Commission points to KRS 341.060 (2) where 'any employing unit which maintains two or more separate establishments within this state' the workers shall be deemed to be employed by a single employing unit, as indicating that the word 'establishment' refers to the physical situs or plant where the work is done, while KRS 341.360 refers to 'A strike * * * in active progress in the establishment

in which he is or was last employed' as disqualifying the worker for compensation. * * *"

"Many cases have been cited in briefs of counsel both sustaining and denying the Company's contention that the word 'establishment' covers the operations of the Company at places other than the source of the claim for benefits. This divergence of judicial views is partially attributable to the wording of the statutes involved, but the opinions are thoroughly reviewed in *Nordling* vs. *Ford Motor Company*, 231 Minn. 68." * * *

P. 660.

"Our act, patterned after the act proposed by the Social Security Board, is in turn patterned after the British National Insurance Act of 1911 (1 & 2 George V, c. 55, part II, Par. 87), which was amended in 1935 (25 George V, c. 8, part III, Par. 26). Under both the 1911 and the 1935 British acts, disqualification is based upon a work stoppage due to a trade dispute at the 'factory, workshop, or other premises' at which the claimant is employed. The British Empire, which is the final arbiter under the British act has consistently held that the words 'factory, workshop, or other premises' refer to single units of employment. The only substantial change in the language of our original act from the British act was that the word 'establishment' was substituted for 'workshop.' It is difficult to believe that this change was intended to broaden the scope of the employment area so as to encompass a whole industry rather than a single unit of employment." * * *

"We believe that the reasoning of the Minnesota court is equally applicable to our Act. * * *"

Unemployment Compensation Commission of the Territory of Alaska, et al., Petitioners vs Frank L. Aragon,

and other applicants. Members of Alaska Cannery Workers Union Local No. 5 et al, respondents. (329 U. S. 143-156)

This case involves the issue of the right to unemployment compensation benefits by employees in the Alaska fishing industries.

The court spoke as follows:

P. 155-6.

> "We see nothing in such a view to require our substituting a different construction from that made by the Commission entrusted with the responsibility of administering the statute.
>
> Nor can we accept the argument of the majority of the Court of Appeal that since negotiations between the companies and the workers were carried on in San Francisco and Seattle, the dispute could not be said to be 'at' the Alaskan establishments as required by the statute. * * * It is clear that the subject matter of the dispute related to the operation of the Alaskan establishments. As a result of the dispute, the normal activities involved in catching and canning salmon were not carried on throughout the 1940 season at any of those establishments. We do not consider significant the fact that the companies and the union did not negotiate at the canneries or on the ships in Alaskan waters. * * * Thus if we assume with respondents that this issue is properly presented for consideration, we conclude that under the circumstances of this case the dispute was 'at the factory, establishment, or other premises' in the sense intended by the Territorial Legislature."

COLLATERAL AUTHORITIES

Godsol vs. *Unemployment Compensation Commission*, 302 Michigan, 652. (1942)

Exhibit B

"Section 41 (3) of the unemployment compensation act as amended in 1937 (Comp. Laws Supp. 1940, S485-81, Stat. Ann. 1940 Cum. Supp. 17.543) provides:

P. 656.

> "Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests, or both, would be an employer under paragraph (one) of this section."

P. 661.

> "In our opinion the language of the statute is clear. It does not require legally enforceable control. It states than an employer under the act would be any employing unit 'which owns or controls one or more other employing units (by legally enforceable means or otherwise).'"

P. 665.

> "The purpose of the unemployment compensation act is to relieve the distress of economic insecurity due to unemployment. It was enacted in the interest of public welfare to provide for assistance to the unemployed and as such is entitled to a liberal interpretation. In our opinion section 41(3) is not unconstitutional."

Lawrence Baking Company vs *Unemployment Compensation Commission*, 308 Michigan, 198. (1944).

It may be noted that the Lawrence Baking Company case involves primarily the interpretation of the Unemploy-

ment Compensation Commission Acts in regards to disqualifications for benefits. The court spoke as follows:

P. 204.

"An individual shall be disqualified for benefits * * *

"(d) For any week with respect to which his total or partial unemployment is due to a labor dispute which is actively in progress in the establishment in which he is or was last employed."

The 1941 Act amended Section 29 to read in part as follows:

"(c) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed."

"To summarize, section 29 (c) of the 1936 act disqualified an employee for benefits if his unemployment was 'due to a labor dispute * * * actively in progress in the establishment.' The 1941 amendment of said section disqualifies an employee for benefits if his unemployment is due to a stoppage of work existing because of a labor dispute in the establishment.'"

P. 209.

"We are convinced that by the 1941 amendment of section 29 (c) the legislature intended to disqualify an employee for benefits only when his unemployment resulted from a stoppage or substantial curtailment of the work and operations of the employer establishment because of a labor dispute. The phrase 'stoppage of work' refers to the work and operations of the employer establishment and not to the work of the individual employee."

In *Chrysler Corporation* vs *Smith*, 297 Mich. 438, which, incidentally, did not involve the interpretation of

the 1941 amendment of section 29(c), Mr. Justice Weist approved the finding of the Appeal Board in language as follows:

> "All interested parties who are involved in a claim for unemployment compensation * * * must be dealt with on an impartial basis. The unemployment compensation fund should never be used to finance claimants who are directly involved in a labor dispute, nor should it ever be denied to claimants who are legally entitled to receive benefits. * * * None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike. The State of Michigan, in so far as this act is concerned, must remain neutral in all industrial controversies."

P. 214.

> "The public purpose of the unemployment compensation law is to alleviate the distress of unemployment, and the payment of benefits is not conditioned upon the merits of the labor dispute causing unemployment. Likewise, the required contribution of the employer to the unemployment compensation fund is not determined upon the basis of the merits of the dispute."

Dwyer vs Unemployment Compensation Commission, 321 Michigan, 178. (1948)

P. 188.

> "* * * it is evident that the purpose of the unemployment compensation act is to provide protection against the evils incident to involuntary unemployment, and thus, to foster social and economic security for the people of our State. The act is intended to provide benefits for those who are unemployed

through no fault of their own, who are willing, anxious, and ready to obtain employment so that they may support themselves and their families. It is intended to benefit persons who are genuinely attached to the labor market, and who are unemployed because of conditions therein over which they have no control. All of the provisions of the act must be read and construed with this public policy in mind."

Renown Stove Company vs Unemployment Compensation Commission, 328 Michigan, 436. (1950)

P. 440.

"Recourse to dictionary definitions is unnecessary when the legislative intent in connection with the statutory disqualification here involved may be so readily gathered from a reading of the statute itself. The declared public policy prompting its enactment and the intent and purpose of the act itself are expressed in section 2 thereof, for a discussion of which see our opinion in *Dwyer vs Unemployment Compensation Commission*, 321 Mich. 178, 188. * * * It was clearly the legislative intent, in enacting the disqualifying provisions of section 29(1)(b)(2), to disqualify an individual from benefits even for a period during which he did not work for his employer, if he received pay from his employer with respect to that period. The act discloses no legislative intent to make such disqualification for the period in question dependent upon whether the individual happened to have been working for the same employer the weeks immediately preceding and following such period, or to render the disqualification inoperative, if, during that selfsame period, the individual performed some other work for another employer, or sought employment elsewhere, or failed to relax because he lacked the assurance that im-

mediately following same period he would be able to return to his old job."

Intertown Corporation vs *Unemployment Compensation Commission*, 328 Michigan, 363. (1950)

P. 366.

"In maintaining its neutral position in employer-employee relations, the State has established statutory bases of disqualifications for unemployment benefits. The disqualifications of subsection (a) are for the duration of unemployment, and this includes the voluntary leaving of work by the employee. The following subsection (b) disqualifies the employee for those weeks of his unemployment which are due to stoppage of work because of a labor dispute in which he is directly involved. The specific provision in regard to the labor dispute disqualification indicates that such should not be within the reach of the 'voluntary leaving' of section 29(1)(a)(1)."

"* * * Unemployment compensation does not depend upon the merits of a labor dispute." *Lawrence Baking Co.* vs *Unemployment Compensation*, 308 Mich. 198.

Cassar vs *Employment Security Commission*, 343 Mich. 380, 412.

"The legislature has prescribed the terms and conditions under which unemployment benefits may be received and has imposed conditions with which plaintiffs have not complied. The right to benefits rests wholly on the statute."

/s/ JOHN V. BRENNAN
Circuit Judge.

Dated: July 26, 1956.

Exhibit C[1]

MICHIGAN SUPREME COURT

ALEXANDER PARK, *et al.*, *Plaintiffs and Appellants,* THOMAS M. KAVANAGH, Attorney General, *Intervenor and Appellant* —*vs.*— MESC. APPEAL BOARD, *et al.*, *Defendants and Appellees.*	No. 47,065

ORDER

The record and proceedings in this cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court, there is MANIFEST ERROR. Therefore, it is ordered and adjudged that the judgment of said Circuit Court for the County of Wayne be and the same is hereby reversed and vacated, and that the cause be remanded to the court below for judgments granting benefits to claimants. It is further ordered that no costs be awarded herein. Justice Kavanagh did not participate.

Exhibit C[2]

MICHIGAN SUPREME COURT

JOHN L. DORSEY, *et al.*,
Plaintiffs and Appellants,

vs.

MESC, APPEAL BOARD, *et al.*, and
FORD MOTOR COMPANY (*Appellant*),
Defendants.

47,124

ORDER

The record and proceedings in this cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court, there is MANIFEST ERROR, Therefore, it is ordered and adjudged that the judgment of said Circuit Court for the County of Wayne be and the same is hereby reversed and vacated, and that the cause be remanded to the court below for judgments granting benefits to claimants. It is further ordered that no costs be awarded herein. Justice Kavanagh did not participate.

JOHN R. DETHMERS
Chief Justice

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FILED
APR 13 1959
JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 831

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,

THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

APPENDIX TO JURISDICTIONAL STATEMENT

APPENDIX TO JURISDICTIONAL STATEMENT

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DECISION OF APPEAL BOARD

(Filed April 5, 1955)

This matter is before the Appeal Board upon appeal by approximately 5700 claimants employed by the Ford Motor Company from a Decision of the Referee dated August 16, 1954, in which the Referee affirmed the redeterminations made by the Commission on October 22, 1953, in which Decision the Referee held that each of the claimants was disqualified for benefits during their respective un-

employment in the weeks ending May 16, 23, and 30, 1953, under the provisions of Section 29 (1)(b) of the Michigan Employment Security Act.

The redeterminations made by the Commission held that the unemployment of the claimants in the weeks above stated was due to a stoppage of work in their plants or departments in Michigan caused by a work stoppage in the Canton, Ohio Forge Plant of the Ford Motor Company, where the work stoppage was due to a labor dispute then in progress there. The Commission considered the Michigan and Ohio Plants of the Ford Motor Company to be parts or units of a single establishment and therefore found each of the claimants directly involved in said labor dispute and disqualified the claimants from receipt of benefits for the period of their unemployment during said weeks under the labor dispute provision of Section 29 (1)(b)(4) of the Michigan Employment Security Act.

The issues in this case are whether the unemployment of the claimants was due to a stoppage of work for any week with respect to which their total or partial unemployment was due to a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and whether they were directly interested in the labor dispute which caused their stoppage of work.

It is the contention of the claimants that because a strike occurred in the Canton, Ohio Plant, the Michigan law does not have extra territorial effect and cannot operate beyond the state line, thereby depriving claimants of benefits under the Act; that the Canton Plant is a separate establishment within the meaning of the Act and that whatever transpired in the Canton strike, and the negotiations resulting therefrom, would have no effect upon the benefit rights of the claimants in Michigan.

Decision of Appeal Board

The employer, on the other hand, contends that the Canton Plant was and is a part of the Ford enterprise and that there was close integration and synchronization between that plant and the units in the Detroit area; that the units in the Detroit area depended upon a continuous flow of parts and material produced at the Canton plant in the manufacture of its product, namely cars, trucks and tractors; that there had been pending for upwards of two years prior to the Canton strike, negotiations on the part of the International Union U.A.W.-C.I.O. growing out of grievances and demands made by other locals in plants situated in other parts of the country, including Michigan, and that as a result of the long standing negotiations a supplemental contract was entered into between the International Union and Ford Motor Company on May 25, 1953, which finally resolved the differences and benefited the employees not only in the Canton Plant but in all units wherever situated, of the Ford Motor Company; that owing to the functional integration and the strike which occurred in the Canton Plant, it became necessary to close certain units in the Detroit area causing the lay-off of the Claimants and that, being one establishment, claimants are disqualified from receiving benefits under the labor dispute provisions of the Michigan Employment Security Act, and, further, that they were directly interested in the labor dispute.

The facts in this case have been thoroughly considered and reviewed by the Referee in his Decision and we deem it neither advisable nor necessary to again set forth the facts in detail except for certain pertinent facts which will be set out in the reasons and conclusions which we have reached. The pertinent provisions of the Act governing this case are contained in Section 29(1)(b) and subsections 1, 2, 3 and 4 thereof, which read as follows:

"Sec. 29. (1) An individual shall be disqualified for benefits:

* * *

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, However, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, However, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the

employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed.

* * *"

The issues have been thoroughly argued by competent counsel representing the respective parties, Zwerdling & Zwerdling appearing for the claimants, Joseph A. O'Reilly and Richard A. Fellrath appearing for the Ford Motor Company, Garfield Geddis appearing for the Commission, Frank E. Cooper, Amicus Curiæ, representing the Michigan Employers' Unemployment Compensation Bureau, and Leonard Meldman, Amicus Curiæ, appearing for the Michigan Federation of Labor. Counsel have also filed with the Board extensive and comprehensive briefs and reply briefs which, together with a brief filed by the Attorney General, have been very helpful and have been considered by the Board.

The record clearly indicates that there was a labor dispute between the International Union U.A.W.-C.I.O. and the Ford Motor Company. It had its origin in the Canton Plant but it did not totally remain there. Soon after the Canton grievances were brought to light, which were local in character, many other demands, industry-wide, were made by the International upon the Company. Grievances were presented in behalf of locals in many other cities in which the Company has plants. Negotiations continued for many weeks until all differences were settled, which re-

sulted in the signing of a supplemental contract on May 25, 1953, and a separate contract adjusting the Canton issues. The supplemental contract was signed in behalf of the International Union by Walter Reuther and many other officials of the Union, and in behalf of the Ford Motor Company by John S. Bugas and other officers of the Company. The contract adjusted many differences set forth in the master contract of 1950 relating to (1) Transfer of Portion of Cost of Living Allowance to Base; (2) Revised Cost of Living Allowance; (3) Increase in Annual Improvement Factor; (4) Skilled Rate Increase; (5) Vacation for Retiring Employees; (6) Hospital, Surgical and Medical Care; (7) Blue Cross Coverage for Retirees; (8) Increased Retirement Benefits, and certain other benefits relative thereto. This agreement affected all employees of the company wherever located; all employees benefited by the negotiations, not only locally but country-wide. The Union kept its members fully advised as to the progress of the dispute through its publication "FORD FACTS". After the strike was called in the Canton Plant on April 20, 1953, the Union continued to keep its members posted on its progress through its publication and on May 9, 1953, warned its members of possible lay-offs due to a shortage of parts and material produced at the Canton Plant. We quote the letter written by Ken Bannon, Director of National Ford Dept. International Union, U.A.W.-C.I.O., to its members, published on the above date in "FORD FACTS":

"Dear Sirs and Brothers:

On April 24, you were advised of the dispute and the issues that led to strike action in the Canton, Ohio plant of the Ford Motor Company. This

letter will bring you up to date on the happenings in this dispute.

Meetings have been held daily with the company, with representatives of the Regional Office and the National Ford Department assisting the Local Union Committee. In all of these meetings, the company has refused to put together a satisfactory agreement that would end the strike.

On Sunday, May 3, a membership meeting was held in Canton. At this meeting, a full report was given to the membership on everything that has taken place in our negotiations. The membership in a very enthusiastic manner commended the negotiators and by its actions demonstrated a solid front against the Company.

In our winning the issue in dispute, the Company's program of combining classifications in the Canton Plant will suffer a severe set-back, because when the Company must pay a higher rate of pay for the added responsibility that comes as a result of two classifications being combined, then its incentive will be destroyed. It is on this principal that the membership in Canton is making an all-out fight. The dispute in its present stage involves a comparatively few workers, but once the principle is established, all of the workers will be protected.

The Canton Plant produces most of the forgings, such as axles, spindles, sectors for steering, and many other items for the Company. Therefore, there is a strong possibility that your plant will be shut down in the immediate future as a result of the shortage of material caused by the strike. When this occurs, it is important that you notify the membership to file for Unemployment Compensation benefits. You will recall that in the strike of May, 1949 our members in practically all states were ruled eligible for Unemployment Compensation benefits.

I shall continue to keep you posted on the progress that is made in this strike. With every best wish, I remain

Fraternally yours,

Ken Bannon, Director National
Ford Department International
Union, UAW-CIO"

Thus the Union recognized that the Canton Plant produced parts and materials essential to the manufacture of the Company's product and that upon cessation of production other plants would, of necessity, have to close down. Regarding the necessity of a continued flow of axles, spindles, steering parts, and other items produced at Canton, volumes of testimony and evidence was introduced. Graphs, charts, diagrams, letters, telegrams, compilations, computations, and a great amount of testimony was offered by heads of various departments or units in the plants affected in the Detroit area to show the impossibility of continued operation without a continuous flow of the vital parts from the Canton Plant. In all, over 3000 pages of testimony was taken and 109 exhibits introduced. It would be physically impossible to here digest the testimony of the many witnesses or to quote at length from the many exhibits. Summarized, however, it may be said that the evidence all points to a close integration and synchronization of parts produced by the many units of the Company and the dependence of one unit upon another for the finished product, and that a strike in the Canton plant would, of necessity, close the plants in the Detroit area.

The Union recognized this fact. In its official publication "FORD FACTS", of May 23, 1953, the front page story carries this headline, "Canton Strike Causes Mass

Lay-Offs". With respect to the right of claimants to benefits the position taken by the Union is clearly stated in two paragraphs of the article which read:

> "If, unfortunately, you do not have sufficient seniority to hold a job in the plant, you should, in order that your rights are not jeopardized, immediately apply for unemployment compensation benefits. The Ford Motor Company may protest your benefit rights, but Local 600 will contest any such protest, because the International Union concurs with the Local Union's interpretation of the Michigan Employment Security Act that—
>
> EMPLOYEES LAID OFF IN THE STATE OF MICHIGAN BECAUSE OF A LACK OF WORK DUE TO A LABOR DISPUTE IN ANOTHER STATE ARE ENTITLED TO UNEMPLOYMENT COMPENSATION BENEFITS."

This is one of the basic questions in this case. Stated in the language of the Act, was the unemployment of these claimants during the period involved due to a stoppage of work existing because of a labor dispute in the establishment in which he was last employed? We shall discuss this question first.

The Company has from the outset strongly maintained that due to the closely knitted and functional operation of its various units, it is one establishment within the meaning of the Act.

Much argument and many citations of authority have been presented on behalf of claimants to show that the Michigan Act can have no extra territorial effect on a strike which, although occurring in another state, causes the shut down of plants in this state. Most of the decisions from other jurisdictions cited in the briefs of counsel and

stressed in argument, were considered and passed upon by the Referee. The Board has duly considered them. It seems to us however, that the answer to this question is found in the law of our own state. The legislature nowhere in the Act refers to a strike. It speaks in terms of "a labor dispute in the establishment".

We do not believe that distance, state lines, or extra territoriality are the predominant barriers to decision. Michigan is not trying to legislate upon the rights of the Canton workers to benefits. Nor do we believe that mere distance alone is a determining factor. This was no obstacle in the Ormiston case where a distance of 600 miles separated the Rouge Plant from the Iron Mountain Plant.

We believe that the basic issue is one of functional integration.

Except for the fact that a state line is involved in this case we can see no distinction whatever between the facts existing here and the facts in *Chrysler Corporation* v. *Calvin N. Smith, et al,* 297 Mich. 438. It is true that in the Chrysler case the Supreme Court was not called upon to decide whether the unemployment of the claimants there resulted from a labor dispute existing in another unit of Chrysler Corporation located in another State. There were many units of the Corporation within the State of Michigan, and particularly in the Detroit area, which were forced to close down due to the strike in the Dodge Main Plant. The question of functional integration was the paramount question in that case, and we believe upon this branch of the case it is the paramount question here.

The Court was there called upon to decide whether or not all of the units of Chrysler Corporation involved in the shut down was one establishment in order to determine whether or not all of the Chrysler Corporation employees in the various plants would be disqualified. The Court also

was called upon to decide whether, under the negotiations with the International Union, all of the claimants affected by the shut down were directly interested in the outcome of the strike and entitled to benefits. The Court stated the question to be:

> "The main question is whether, under the legislative employment of the term 'establishment' in Section 29(d) of the act, the units constituting the work production system set up by the corporation, should be held separate 'establishments' or, as a whole, an 'establishment'. An 'establishment', under the simplest definition and common sense understanding, is merely something established. The purpose and use of the creation, if to accomplish an end in which all units are participants in bringing it about, constitutes the units, so synchronized and employed by the Chrysler Corporation in accomplishment of a common end, an 'establishment' within the meaning of the term as employed in the act."

The Court then cited and considered the case of *Spielman* v. *Industrial Commission, et al*, 236 Wis. 240 (295 N. W. 1), wherein a labor dispute occurred in the Milwaukee plant and the employees of the Kenosha plant, on account of a labor dispute, went on strike and that resulted in shutting down both plants. The Wisconsin Supreme Court held:

> "That although the two plants were forty miles apart, they were just as much a single establishment for the manufacture of automobiles as they would have been had they been in two buildings adjacent to each other."

and that the two plants located in Milwaukee and Kenosha constituted an "establishment" within the meaning of the Wisconsin statute, which is, in effect and import, the same as the Michigan Act. The Court further said:

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> "The labor dispute involved new contract provisions in which claimants were directly interested, and the stoppage of work and the calling of a strike in the main plant were well calculated to bring about a new contract of employment of direct interest to all claimants."

Further, the Court said:

> "In the case at bar, under the election ordered by the National Labor Relations Board the UAW-CIO became the sole bargaining agent for every plant division of the Chrysler Corporation and, as such, its activities in the labor dispute directly involved claimants and their interest."

After holding that the claimants were directly interested in the outcome of the dispute and were directly involved, the Court held:

> "We hold that the Dodge Main Plant and the mentioned synchronized units constitute one 'establishment' within the meaning of that term as employed in the act, and claimants are disqualified from unemployment compensation by reason of the fact that their claims are based upon unemployment during a period in which a labor dispute, in which they were directly involved was in active progress, caused stoppage of operations in the establishment where they were employed."

On December 13, 1951, Hon. Glenn W. Jackson, Circuit Judge of Dickinson County, handed down a decision in the case of Walter Ormiston, et al, vs. Appeal Board of the Michigan Unemployment Compensation Commission, et al, in which he affirmed the Decision of the Appeal Board holding that the claimants therein were disqualified from receiving benefits under facts similar to the case at bar. In the Ormiston case a strike was called at the Rouge and

Lincoln Plants of the Ford Motor Company growing out of certain grievances. It was shown that certain parts and material produced at the Rouge Plant were necessary in the production process at the Iron Mountain Plant, 600 miles away. This caused a shutdown of the Iron Mountain Plant whereupon many, if not most of the employees filed claims for unemployment benefits. Judge Jackson discussed the Chrysler case at some length, which was held by him to be controlling. The Court said:

> "If this holding should be changed or modified in any way, as claimed by the appellants, their remedy is in the Supreme Court and not in this Court. This inferior Court is in no position to attempt to overrule the Supreme Court, to follow a dissenting opinion, or the opinion of Courts of other states, which conflict with the decisions of our Supreme Court, no matter how persuasive their opinions might be."

The Court further said:

> "The Legislature of Michigan cannot project its legislation beyond the boundaries of the State and the Supreme Court of this State, likewise, cannot project its rulings beyond State boundaries. The Legislative Acts and Supreme Court decisions of other States have no effect within Michigan. If the outside decisions would seem to indicate any need for any change or modifications of our decisions, that is solely a matter for our Supreme Court to consider.
>
> "This Court has no other alternative than to hold that the Iron Mountain Plant was a part of the same establishment as the Rouge and Lincoln plants."

The Court further considered and relied upon *General Motors Corp.* v. *U.C.C.*, 321 Mich. 724, in which the Supreme Court held that all of the employees of an estab-

lishment are "directly involved" in every labor dispute in the establishment, as a matter of law. Amplifying the foregoing Judge Jackson said:

> "In other words, this is a legislative declaration that all employees are directly involved in a labor dispute, causing a stoppage of work, irrespective as to whether or not they may have any direct interest in the subject matter of the dispute in another plant."

From the foregoing it is our opinion, and we so find, that the unemployment of the claimants in the case at bar was due to and grew out of a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and that all of the units of the Ford Motor Company, both in Michigan and Ohio, constituted one establishment within the meaning of that word as contained in the Michigan Act.

WERE THE CLAIMANTS DIRECTLY INTERESTED IN THE LABOR DISPUTE?

A careful reading of the record shows that the labor dispute in this case was not a purely local affair. Numerous grievances and demands had been made upon the Company as far back as 1951 and 1952 which had not been resolved to the satisfaction of the Union. Correspondence between the International Union UAW-CIO and the Ford Motor Company shows repeated demands made by locals in plants located in many states. The International appears to operate in a closely knitted, integrated manner with its locals and its modus operandi is to negotiate for them on a national as well as local scale. While it may be said that the grievances existing at the Canton plant precipitated the closing of the plants in the Detroit area, negotiations had developed to a serious point on issues which not only affected

the workers there but in all other units of the company as well.

The record shows that while the contract of 1950 would not expire until June 1, 1955, the Union had belabored the Company to reopen it for modifications respecting demands relating to pensions, cost of living increases, and other issues appearing in the Supplemental Contract of May 25, 1953. The record points to a strong indication that these demands were the paramount issues and that the demands at the Canton Plant were subordinate in point of importance. A great amount of testimony was taken and evidence submitted in support thereof. Only a fractional portion of the hundreds of pages of testimony can be quoted upon this branch of the case.

The witness Cummings, Assistant to the Manager of Labor Relations, testified that these demands started on September 30, 1952, at a meeting with the Union Negotiating Committee followed by a meeting next day at a local hotel. He stated:

> "The demands all had to do with the union's stated position that contracts were not static, legalistic documents but on the contrary were living, breathing things and that they had asked that we reopen our contract in advance of the date for reopening, which was 1955, and that we grant certain concessions to the union. They wanted our pension plan changed; they wanted the so-called cost of living allowance frozen into the base rates; they wanted the improvement factor increased from four to five cents per hour; they wanted to change our hospitalization on the West Coast, adopt permanents."

At a meeting on March 17, 1953 with Mr. Bannon of the International Negotiating Committee, the latter re-

ferred to the three prior meetings held at the Union's request to reopen the contract:

> "Mr. Bannon stated that the only type of bargaining that we understood was crisis bargaining, that we were never in a position to make any concessions to the union unless a crisis was developing in one of our plants. He suggested that that probably would be the way to bring us to terms, to create a crisis. I recall that Bannon stated definitely that if it was necessary to do that, he would do it."
>
> * * *
>
> "Mr. Prato, who was present at that time, said that the only way they could get anything out of Ford was to push and squeeze them."

He also referred to Mr. Galvin, of Chicago, a member of the Committee, who informed him "that the people were not going to hold still for this thing for long and that they could cause us plenty of trouble within the framework of the contract. * * * We started having strikes in our key plants. They started a strike at our Monroe Plant which was the first one."

On April 8, 1953, in response to a call from Bannon, the witness met with him and Prato.

> "At that time Bannon told me that if we would make a concession on the social security aspect of our pension plan that we would settle the Monroe strike and that the Canton strike, which was already threatened by virtue of the letter of April 2, would not come off. He said that if we saw fit to make this concession that he would then have his people act as firemen in putting out fires rather than in building fires.
>
> * * *

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"I had further discussion on May 12, May 13 and May 14, at which time the Canton strike was in progress, at which time definite proposals were made that if we would make concessions on the union's other demands that we would settle the Canton strike.

* * *

"He stated in substance, as I have outlined before, he said it would be necessary that we make some movement on the social security aspect of the pension plan here, in order to settle the Canton strike; that we would have to beat General Motors' offer on freezing the costs of living into the base rates. General Motors at that time had offered to freeze 14 cents an hour in. The other demands of the union were outlined. There was the increase in the improvement factor. We also had the problem of transferring from the old to the new BLS cost of living index.

* * *

"He told me that even if we settled the Canton strike without moving on this other thing, that Mound Road was the next on the timetable.

* * *

"We told them that we were willing to discuss contract changes, that we had been wanting to do it for some time, but that we could not do it as long as the Canton strike was in progress; that we must insist that the Canton strike be settled before we would sit down and have any meetings on the big package, or the amendment of the master contract. * * * The term 'big package' was used pretty generally to denote the major concessions that the union was requesting in the way of amending the contract, all of the various items that they had been pressing for."

Following the negotiations which had continued for a long period of time, the parties finally met at a hotel in the City of Detroit. A committee representing the Canton workers and a committee representing the Ford Motor Company met in one room for the purpose of concluding a contract with respect to the Canton grievances; another committee of the International Union and a committee representing the Ford Motor Company met in another room for the purpose of concluding the amendments to the master contract. The Company insisted, however, that the Canton grievances be settled first and that that contract be executed prior to the execution of any contract settling the grievances of the master contract. The upshot of these meetings was that the Canton contract was signed some few hours preceding the execution of the supplemental contract of May 25, 1953.

At the hearing of January 28, 1954, the witness Manton M. Cummings further testified:

> "At a meeting on April 8, which I have previously mentioned, and during the time the Monroe strike was in progress, I had conversation with Mr. Bannon, at which time he asked that the company move on the social security aspect of our pension plan which, in substance, would increase benefit payments to certain retirees. At that time Mr. Bannon advised me that if we saw fit to move, we could settle the Monroe strike; that the Canton strike, which we had received a letter concerning, would not take place, and that we could settle the wage rates at Cleveland, negotiations on which had been in progress prior to this time.
>
> * * *
>
> "I met him later that day and we talked about the strike situation at Canton, and ways and means of settling that dispute. Then I made the statement that

I assumed that if we settled Canton without settling on the big package, that we would probably have a strike at the Cleveland Engine plant and probably at the Buffalo Stamping plant, and Mr. Bannon advised me that that was not the correct timetable, that the order of proceeding was that we would strike at the Cleveland Engine plant and then at Mound Road; that the Buffalo Stamping plant would not be struck at this time because the union had not been in that plant long enough to make an independent determination of their ability to support a strike at the Buffalo Stamping plant, another key plant.

* * *

"We had the Canton strike in progress. We were curtailing our operations. Many of them had been curtailed. We were convinced that the Canton strike was a part of the pressure to get us to move on the big package. The price that we had to pay to settle the Canton strike if we did not move on the big package was prohibitive, and we just determined that if we were going to move on the big package that we had to get the Canton situation out of the road because if we failed to do that, we would be no better off after having made our concessions on the big package than we were before."

At the same hearing at which the testimony of Mr. Cummings appears above, Mr. Robert S. Dunham, Assistant Industrial Relations Manager of the Ford Motor Company gave testimony respecting a meeting with the U.A.W.-C.I.O. National Negotiating Committee on or about March 17, 1953. Several representatives of the Company appeared with him and a committee of the International represented the Union. Discussion centered around change of the old Bureau of Labor Statistics Index to the new Index and change in the pension plan, i.e., the amount of money which the Company would pay to the

workers which arose out of the Government raising the maximum from $80.00 to $85.00. Mr. Dunham stated that the Company's position was that the contract was for five years and it provided for changes of that character and therefore the Company did not see fit to make any change or discuss it. He stated the position of the Union through its spokesman, Mr. Bannon:

> "We realize we have a contract with you and we know what is in the contract, but we want you to know that within the confines of that contract that we can cause you plenty of trouble and, if necessary, I'll see to it that we do."

At the same hearing before the Referee on the above date Donald E. Scriven, Manager of Hourly Personnel and Labor Relations Department of the Company, testified that he had a discussion with Mr. Bannon on December 16, 1952, in an airplane enroute from Buffalo to Detroit. This discussion followed a negotiating committee meeting growing out of certain grievances in the Buffalo Plant. Among other things the discussion referred to a letter which Mr. Bannon had sent to the Company on or about December 3, 1952. We quote his testimony as follows:

> "He stated that he had notified the company in a letter of December 3 that he was instructing the local unions dealing with the Ford Motor Company to harass management within the contractual limitations, the legal limitations of our contract, and that it was undoubtedly in response to that letter to the Long Beach plant that we were experiencing the difficulty in Long Beach.
>
> * * *
>
> "He then stated that he was not interested in shutting down one or two or three assembly plants, inasmuch as that would result only in the discontinu-

ance of operations at that specific location; that he was more interested in closing down a manufacturing plant, and he specifically mentioned Canton or Monroe, inasmuch as the closing of those plants would result in the shutdown of the entire Ford Motor Company, including all of the assembly plants."

The hearing on March 17, 1954, was taken up entirely with the testimony of Kenneth Bannon, Director of the National Ford Department, U.A.W.-C.I.O. His testimony occupies 149 pages of the transcript. With reference to the testimony given by the witness Donald Scriven, and with particular reference to the conversation on the trip from Buffalo to Detroit, Mr. Bannon testified as follows:

"Q. In testimony in these proceedings on January 28, Mr. Donald Scriven of the Ford Motor Company testified concerning a discussion which he alleges he had with you on December 16, 1952 in an airplane. Do you recall that discussion?

A. Yes, I do. I talked with Mr. Scriven returning from negotiations involving a health and safety dispute in the Buffalo assembly plant.

Q. Mr. Scriven alleged in his testimony that you made some reference to the Canton, Ohio plant in that conversation. Do you recall the circumstances of your discussion?

A. I recall talking to Mr. Scriven, as I stated here, but I am certain that I made no mention of the Canton plant to Mr. Scriven. There was no reason for mentioning the Canton plant.

Q. Mr. Scriven alleged on page 44 of that transcript that you stated that you were not interested in shutting down one or two or three

assembly plants, but were more interested in closing down a manufacturing plant, and that you specifically mentioned Canton or Monroe. Will you state your recollection on that matter.

A. Yes. The purpose for sitting with Mr. Scriven and talking with him was to try to avoid a strike situation in the Buffalo assembly plant. We had discussed the health and safety problems at that plant and further meetings were to be set up. As a matter of fact, Mr. Scriven called me at my home subsequent to the plane trip that he mentions here. Oddly enough, in the agreement that was put together with regard to the Buffalo dispute, there was language in there that would completely contradict what Mr. Scriven said here."

With reference to the testimony of the above named witnesses that the Union deemed it necessary to create a "crisis" in order to bargain successfully with the Company, Mr. Bannon testified as follows:

> "You will find as time went on that more and more letters were sent in to Mr. Bugas on these crises that did occur out in those different shops. The term became rather general in Ford that what we really had was crisis bargaining, and what we complained about as one of the issues in our May 24 meeting with Mr. Ford and Mr. Breech and other executives of the Ford Motor Company was that this decentralization program of Ford Motor Company with respect to labor relations problems created crises, and we thought that the thing should revert back, or something should be done whereby we could have Mr. Bugas' office having more say in the problems out in the field."

With reference to the modification of the existing contract and the demands which the Union had made in re-

spect thereof, Mr. Bannon summarized the various discussions which he had had with the Company with reference to the changes sought as follows:

> "Mr. Cummings and I had many meetings, and in some of the meetings—and I imagine in these meetings mentioned here—we discussed two issues. We discussed the general problems applying to all Ford plants that was contained in my letter of December 3, first brought to the attention of Ford Motor Company in our meeting of September 30 and October 1. When I am talking about the general problem, I am referring to the transition agreement from the old index to the new index, something that had to be done, because after all the Ford agreement does provide or did provide, rather, that our cost of living clause was operative only so long as the old index was available. At the point that the old index was to be discontinued or was discontinued, which initially was for the adjustment that would be due March 1, the first pay period in March of 1953, why, in the absence of a transition agreement, we couldn't in fact be working without an escalator clause in our contract, without a whole contract.
>
> "We talked about the pension agreement. We talked about the escalator clause itself, the moneys that were part of it and the general economic problem that again I say we brought to the attention of Ford Motor Company as far back as September 30 and October 1."

From the foregoing testimony above quoted and much other testimony pointing in the same direction, together with the numerous exhibits, including the correspondence between the Union and the Company, there is no doubt that the Union was insisting upon changes for the betterment of all Ford employees in all plants.

Decision of Appeal Board

Based upon the testimony above quoted and the entire record, we find that because of the negotiations arising out of grievances and demands made by the International Union not only in the Canton Plant but in other units as well and on behalf of its entire membership, resulting in a general modification of the 1950 contract, namely the supplemental contract of May 25, 1953, the claimants herein were benefited thereby, and as a result thereof were directly interested within the meaning of the Act, and that the claimants are disqualified from receiving benefits for the weeks in question.

The Decision of the Referee is hereby affirmed.

Calvin N. Smith, Chairman
Duane H. Mosier, Member

Dissenting Opinion, Appeal Board

CHARLES E. LOUGHEED, MEMBER (DISSENTING):

I cannot agree with the majority that claimants here shall be disqualified under Section 29(1)(b). This unprecedented decision marks the first occasion on which it ever has been held in Michigan that claimants shall be disqualified because of a labor dispute which occurred in another state. There is no basis in court decisions for such a ruling. The nearest guidance in the form of court decisions on this issue would be the guidance furnished us by several decisions in the previous Ford labor dispute which caused unemployment in plants in states other than the plant in which the dispute occurred. In that instance, all but one state supreme court held that there was no disqualification. The one state which held for disqualification, Georgia, is not a state whose views, reasoning, or law should be applied to the State of Michigan.

Dissenting Opinion, Appeal Board

There can be disagreement as a matter of legal interpretation as to the meaning of the word "establishment" in connection with the argument as to whether or not the Ford Motor Company is one "establishment" crossing state lines. But regardless of one's view on this legal issue, I certainly cannot understand a finding of fact that claimants who were laid off through no fault of their own in the Michigan plants were within the meaning of the Act, "directly interested" in the Canton labor dispute. This finding is contrary to the evidence.

The last time we had a Ford strike case before us, it was clear that a dispute over the speed of assembly lines in the Rouge plant could be argued to be of direct interest to the claimants in the Iron Mountain plant of the same company. Yet, in that case we refused to find that there was "direct interest" and the Circuit Court to which the case was appealed upheld our view. See *Walter Ormiston et al vs Appeal Board.* There Circuit Judge Jackson pointed out that "the Appeal Board has relied upon (b) (4)". He agreed with this holding, saying:

> "I cannot find, as a matter of law, that the appellants were directly interested under (b)(2)".

I cannot understand the majority here finding "direct interest", in a case where there is no such evidence of direct interest as there was in Ormiston.

The Commission in the instant case disqualified claimants only under Section 29 (1)(b)(4) since it recognized that they had no "direct interest" in the Canton dispute.

The majority has totally ignored the actual cause of the change in the National Agreement between Ford Motor Company and the International Union, UAW-CIO, despite the fact that both the record, and general knowledge, with-

out question establishes that the change in the Ford National Agreement May 25, 1953, was caused by the change in the National GM Agreement three days earlier. The majority has quoted the company spokesman, Mr. Cummins, in support of other points, but failed to quote the following:

> "Q. When you say the facts speak for themselves, are you referring to the fact that General Motors entered into an agreement with the UAW on May 22, that you entered into an agreement on May 25, Chrysler entered into an agreement on May 27, and then General Motors entered into one May 28. Those are the facts you are talking about?
>
> "A. (Cummins) I think that is right. I did not participate in the Chrysler and General Motors negotiations." (Jan. 25: page 131)

The majority fail to make any reference to the extensive, detailed and unchallenged testimony of union witness O'Rourke, which spells out the local nature of the issues in the Canton strike. A mere reading of the Canton agreement makes it clear that the issues in dispute at Canton were local issues. A reading of the May 25 Ford National Agreement in comparison with the GM and Chrysler agreements makes it clear that the occasion for the change in the Ford National Agreement was the change in the GM agreement immediately prior to that time.

To summarize, the unemployment of these Michigan claimants may have been caused by the strike at the Canton plant, but that dispute at the Canton plant clearly had as its subject matter only local issues which did not involve the Michigan claimants. The agreement which settled that Canton strike (Exhibit 6), signed by the company as well as the local union says:

Dissenting Opinion, Appeal Board

> "It is mutually agreed between the proper representatives of the Ford Motor Company and Local 542 of the UAW-CIO that the following constitutes a full and complete settlement of the dispute of April 20, 1953".

I accept as governing this statement by both company and union made at the time rather than for purposes of argument later in an unemployment compensation case.

Obviously these claimants along with all other Ford workers did receive benefits in which they were directly interested as the result of the modification of the National Agreement (Exhibit 83) on May 25, 1953. But this National Agreement was modified without a stoppage of work because of a labor dispute as its cause. The cause of this National Agreement being modified May 25 was the yielding of the biggest of the "Big Three" in the auto industry on May 22 to demands made on all of the Big Three. GM set the pattern in 1953 and Ford followed suit, just as it is apparent at the present time that in 1955 when one of the companies sets the pattern the other companies no doubt will follow suit. This has been the history in the industry over the years and this is what the record in this case shows occurred in 1953.

I therefore dissent from the majority opinion on the application of Section 29(1)(b) to these claimants on two grounds:

1. I do not believe, as a matter of law, that these claimants were unemployed due to a stoppage of work existing because of a labor dispute in the establishment in which they were last employed. I do not believe the word "establishment" refers to the Ford Motor Company on a national or international basis. I believe that a dispute

in a plant in Ohio does not involve claimants in Michigan plants in such dispute as a matter of law.

2. I am firmly convinced that the record shows there is no evidence on which to base a finding of fact that these claimants laid off in the Michigan plants were "directly interested" in the labor dispute which occurred in the Canton, Ohio, plant of the Company. Such a holding of direct interest is not only contrary to the great weight of the evidence but contrary to any evidence in the record.

State of Michigan }
County of Wayne } ss.

Charles E. Lougheed
Charles E. Lougheed, Member

I, D. A. Kusch, Executive Secretary of the Appeal Board of the Michigan Employment Security Commission, do hereby certify that the above and foregoing is a true and correct copy of the Decision of the Appeal Board entered in the above entitled matter on: April 5, 1955.

D. A. Kusch
Executive Secretary, Appeal Board

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

THE COMMERCE, EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FEDERAL CONSTITUTION PRECLUDE APPELLANTS' CONTENTION THAT "ESTABLISHMENT" SHOULD BE INTERPRETED AS "PLANT" OR "PREMISES".

The Michigan Employment Security Act is not an isolated state statute but is rather a part of a Federal-State system for providing unemployment compensation benefits. The Michigan statute, enacted in 1936, followed the passage of Federal laws known as the Social Security Act (49 Stat. 620) and the Wagner-Peyser Act (48 Stat. 113), which together provided for a national employment system. Section 12 (MSA § 17.512) of the Michigan Employment Security Act expressly accepts the conditions of the Wagner-Peyser Act, as amended, in order that the State of Michigan might qualify for the tax offset provided in the Social Security Act. Both the Michigan Act and the Federal regulations contemplate that in the administration of the statute the State Commission shall consider out-of-state facts and assume responsibility in the administration of the state system so as to coordinate with the national scheme.*

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*The Workmen's compensation case discussed at pages 54-57 of Appellants' [Dorsey] brief, *Wagner* v. *LaSalle Foundry Company*, 345 Mich. 185 (1956) points up the fact that the Michigan Employment Security Commission not only may, but must, consider out-of-state facts in the administration of the Act. In reaching the conclusion in the *Wagner* case that the Michigan Workmen's Compensation Act was not applicable to an Ohio employer for whom the compensation claimant previously had worked in Ohio, the Michigan Supreme Court was required to consider pertinent events that had occurred in Ohio. Similarly, in the case at bar, the Commission, Referee and Appeal Board were required to, and did, give effect to occurrences in Ohio that were pertinent and necessary to a decision as to whether the claimants' unemployment was due to involvement in a labor dispute within the meaning of the Michigan Employment Security Act.

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

Federal regulations under the national legislation accepted by the Michigan Act further illustrates the national character of this legislation. The supplement to 20 CFR 602.2(c) states that each state agency shall cooperate with the United States Employment Service in the interstate recruitment and transfer of workers. Section 603.4 provides that each state shall submit a statement that it will comply with and carry out the regulations prescribed under the Wagner-Peyser Act providing for a "National System of Public Employment Offices." Section 20 CFR 602.2(d) provides that the state agency shall establish and maintain adequate arrangements and procedures to assure that workers and employers have full access to job opportunities and the available labor supply within the area (any single labor market area covering parts of two or more states) "*without regard to state boundaries*" (emphasis added).

The Michigan social security tax is levied in respect of the privilege of employment without regard to whether the service is in commerce. The state is enabled to levy such a tax by reason of Federal permission granted by an Act of Congress (53 Stat. 1391, now 26 U. S. C. § 3305), which provides as follows:

> "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce."

The Michigan Act, by its terms, extends to the full reach of the foregoing federal permit. It expressly covers

services in interstate commerce. Section 42 of the Act provides in part:

> "(1) * * * 'employment' means service, including service in interstate commerce, * * *
>
> "(2) the term 'employment' shall include an individual's *entire* service, performed within or both within and without this state if:
>
> (a) the service is localized in this state; or
>
> (b) the service is not localized in any state but some of the service [is] performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in this state; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state."

The Michigan tax is a tax on the privilege of employment of a service in interstate commerce whenever the employer is engaged in interstate commerce.

Under sections 19 and 20 of the Act, the ultimate cost to the employer is related to the employer's own benefit payment experience under the provisions of the Act as administered by officials of the State of Michigan. Disqualification of claimants under the labor dispute provision of section 29(1)(b) of the Act affects the benefit payment experience of the employer involved. In order, therefore, that the tax so imposed shall not discriminate against interstate commerce, and thus shall not constitute a burden upon such commerce, *the word "establishment" in the labor dispute section must receive an interpretation which will bring*

the protection of its provisions reasonably within the reach of every interstate employer subject to the tax.

"Employing unit", as defined in section 40 of the Act, means any "type of organization", whether domestic or foreign, having in its employ one or more individuals performing "services for it within this state". The express reach of the Act therefore includes many employers whose headquarters and primary operations are wholly without the state. This is emphasized by section 11(f) of the Act, which provides for service of process upon the Michigan Secretary of State in respect of "any employing unit which is not a resident of this state and which exercises the privilege of having 1 or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state * * *". This provision is calculated to reach employers who have neither plant nor premises or place of employment within the state.

In view of the above-mentioned Federal Enabling Act, a comparable provision in the State of Washington Unemployment Compensation Act was sustained in *International Shoe Co.* v. *State of Washington*, 326 U. S. 310 (1945). A foreign corporation which merely employed salesmen to solicit orders from prospective buyers within the state, to be accepted or rejected by the corporation outside the state, was held to be within the Act. The Michigan Employment Security Act has similarly been applied. Thus, in MUCC—203 Rulings of General Counsel 1347 (1937), there appears the following ruling:

> "Lumberjacks of Wisconsin operating in Michigan Woods are in 'employment' in this state.
>
> "A Paper Mill Company, which has its offices in Wisconsin but whose workmen cross the state

line to the Michigan woods for their logging work, returning to the Wisconsin camp for food and lodging at night, is an 'employer' and required to make contribution payments into the Michigan Unemployment Compensation Fund, for the labor is being performed on Michigan soil."

MUCC 279, Ruling of General Counsel 1580 (1-7-38), is to the following effect:

"Localized service though controlled extra-territorially held in Michigan employment.

"Services localized in Michigan, though controlled from Ohio, are in Michigan employment; the fact that the individual may be transferred to another state is immaterial.

"X Company is a foreign corporation. The salesman for the Company spends the greater portion of his time in Michigan; but his operations are controlled from Ohio."

Mich. UCC 283, Ruling of General Counsel 1531a (12-16-37), contains the following:

"The two employees involved travel entirely within the State of Michigan and sell coal for the employer who is located in Ohio. The activities of these men are directed from the Ohio office, and the Ohio employer was desirous of having the men covered by the Ohio Unemployment Compensation Act. * * *

"It is held that the two employees in question are covered by the Michigan act and X Company is required to make contribution to the Michigan Unemployment Fund on the wages paid to them in accordance with the relevant provisions of the Michigan act."

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

It is perfectly plain from the foregoing opinions of the Commission's General Counsel that the Michigan Act is applied to employers having neither a plant nor any premises or place of employment within the State of Michigan.* Ownership of a plant or place of employment within the state bears no reasonable relation whatever either to the incident of the tax or the basis of disqualification under paragraph (b) of Section 29(1) of the Act. The tax is imposed solely upon the privilege of employment, without regard to whether or not employment is at a plant within the state. To require employers to possess a plant, or place or premise of employment within the state, *in order to benefit under the labor dispute provisions of paragraph (b)*, therefore, would discriminate against interstate commerce and place a burden upon commerce in violation of the Commerce Clause of the Federal Constitution.

Interpretation of the word "establishment" as limited to "plant" or premise or place of employment within the State of Michigan, as contended by appellants, not only would offend the Commerce clause of the Federal Constitution, but the Equal Protection and Due Process clauses as well.

It is no answer to assert that the statute, given the interpretation urged by the appellants upon the Court, would apply alike to local and interstate employers without discrimination. The practical operation of such an interpretation would be to withhold from an interstate employer (having no plant within the state) the same protection for his share in the Unemployment Compensation Fund which

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*As shown in Exhibit 120 (p. 1244b), Ford Motor Company itself has paid in respect of employees of its International Division and of its Ford Export Operations having payroll locations outside of Michigan, viz., in New York and New Jersey.

the labor dispute provision of the statute would accord to a local employer having his plant within the state.

In *Bethlehem Motors Co.* v. *Flynt*, 256 U. S. 421 (1921), the Supreme Court rejected an argument by the Attorney General of the State of North Carolina that the tax there in question was "as applicable to resident manufacturers" as to "non-resident manufacturers" and, inferentially "that its condition can be performed as easily by one as by the other, and discriminates against neither." The Court said (at 426):

> "To this we cannot assent. The condition can be satisfied by a resident manufacturer, his factory and its products in the first instance being within the State; it cannot be satisfied by a non-resident manufacturer, his factory necessarily being in another State, some of its products only at a given time being within the State. Therefore, there is a real discrimination, and an offense against the Fourteenth Amendment, * * *."

In *Nippert* v. *Richmond*, 327 U. S. 416 (1946), the Court said (at 432):

> "* * * the tax is highly variable in its incidence and effects with reference to the manner in which one organizes his business and especially in respect to its location and spread in relation to state lines. It was exactly these variations, when they bear with undue burden upon commerce that crosses state lines, which the commerce clause was intended to prevent."

Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions

THE COMMERCE, EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FEDERAL CONSTITUTION PRECLUDE APPELLANTS' CONTENTION THAT THE "ESTABLISHMENT" AND "LABOR DISPUTE" BE WHOLLY WITHIN THE STATE.

As above demonstrated, the term "establishment", for Constitutional reasons, must refer to an organizational concept (as distinguished from a plant or street address), such as that developed in the *Chrysler* case. The scope of such an establishment is dependent upon the actual functional organization of the employer's operation, which has no necessary relation to state lines.

"Labor dispute" is likewise conceptual in nature and is not related to state lines.

The disqualification provision in the Michigan Act may not be constitutionally construed in its application to an organization or labor dispute extending across state lines so as to result in a greater tax with respect to the privilege of employment in the State of Michigan than would be imposed if the organization or labor dispute were wholly within the State.

In *Pacific Co.* v. *Johnson,* 285 U. S. 480 (1932), Justice Stone said (at 493):

> "* * * State taxes which, if non-discriminatory, would be upheld, even though they reach or affect those engaged in interstate commerce, are condemned if they discriminate against those so engaged, by placing on them heavier burdens than those imposed on others within the state. * * *"

In *Memphis Steam Laundry* v. *Stone,* 342 U. S. 389 (1952), Chief Justice Vinson said (at 395):

> "* * * The Commerce Clause created the nation-wide area of free trade essential to this country's

> economic welfare by removing state lines as impediments to intercourse between the states. The tax imposed in this case made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause."

Whether the practical operation of the statute meets the Constitutional test under the Commerce Clause is a question for the Supreme Court. As Justice Reed pointed out in *Best & Co.* v. *Maxwell,* 311 U. S. 454 (1940) (at 455-6):

> "The commerce clause forbids discrimination whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce. This standard we think condemns the tax at bar. * * *"

(at 457):

> "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language."

Thus, if the interpretation of the term "establishment" urged by the Appellants were to be adopted, a serious question would arise as to the constitutional validity of the Michigan Employment Security Act, particularly with respect to those provisions which purport to levy a tax upon interstate employers whose integrated operations extend beyond the boundaries of the State of Michigan.

It is axiomatic that courts adopt that interpretation of the statute which will avoid raising questions as to its constitutionality.

STATE OF MICHIGAN

IN THE

SUPREME COURT

[Captions Omitted]

Application of Ford Motor Company, Defendant and Appellee, for Rehearing

Now comes Ford Motor Company, defendant and appellee, and makes application to this Honorable Court for a rehearing in said causes for the following reasons:

The Referee, the Appeal Board and the Circuit Court of Wayne County found that the claimants were in fact directly involved in the labor dispute causing their unemployment. The claimants accordingly were held to be disqualified for benefits under Section 29 of the Michigan Employment Security Act for the reason that their unemployment was due to a stoppage of work, existing because of a labor dispute, in the establishment in which they were employed. No other decision was possible under the wording of the statute as interpreted by the Supreme Court of Michigan in *Chrysler Corporation v. Smith*, 297 Mich. 438 (1941); and in *Chrysler Corporation v. Appeal Board of Michigan Unemployment Compensation Commission*, 301 Mich. 351 (1942).

The claimants appealed to this Court, contending that the doctrine of the *Chrysler* cases should be overruled and that the statute should be construed so as to award them unemployment compensation.

In its brief, the appellee, Ford Motor Company, argued (Br. p. 26) that this Court should adhere to the interpretation of "labor dispute" and "establishment" as laid down in the *Chrysler* cases. Appellee pointed out (Br. pp. 77-84)

that failure of the Court to follow its precedents in this connection would not only render the statute unconstitutional as effecting a discriminatory burden upon interstate commerce, but would also deny appellee equal protection of the laws, and deprive it of due process of law under the Federal Constitution.

This Court, in its opinion filed January 12, 1959, overruled its long-standing precedents in the *Chrysler* cases. The majority held, as a matter of law, that the disqualification provision of the statute did not become operative because (1) appellee operated an integrated enterprise consisting of several manufacturing plants, as distinguished from a single place of business within the State, and (2) the strike occurred at the appellee's plant in Canton, Ohio, whereas there was no strike, and therefore no labor dispute, at the appellee's plants in Michigan where the claimants were employed.

There was thus drawn into question the validity of a state statute under the Constitution of the United States, the decision of this Court being in favor of validity.

Under the rules of this Court, appellee hereby applies for a rehearing of that decision and respectfully urges this Court to reconsider the questions arising under the State and Federal constitutions in the light of the considerations hereinafter set forth, and to affirm the decision below. Such affirmance would permit adherence to the precedents which give to the statute an interpretation not only consistent with constitutional requirements, but also consistent with all provisions of the statute.

The evident purpose of the Michigan statute is to provide unemployment compensation benefits only where unemployment is involuntary, and to deny benefits where the claimant is "directly involved" in the labor dispute

which has caused the stoppage of work resulting in his unemployment. Disqualification for direct involvement in such a labor dispute is necessary to prevent perversive use of the unemployment benefit statute as a vehicle for financing—at the employer's expense—the very labor dispute which has caused the unemployment.

The first sentence of section 29(1)(b) provides that an individual shall be disqualified for benefits:

> "For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute."

The conduct or circumstances constituting direct involvement by an employee in a labor dispute, so as to disqualify him for benefits, are set forth in subsections (1) through (4).

The cost of unemployment compensation benefits is taxed to employers on the basis of their respective employment within the State. But the rate of tax for each individual employer is adjusted with reference to his own unemployment experience in that the larger the amount of the unemployment compensation payments, made from the State Fund with respect to his enterprise within the State, the higher the rate of his tax. The employer's rate of tax is not increased, however, by reason of unemployment due to a stoppage of work, existing because of a labor dispute, if the claimants receive no unemployment compensation because of disqualification under Section 29(1)(b) of the statute.

For over seventeen years, the disqualification section, as interpreted in the *Chrysler* cases, has applied equally

and without discrimination whether the employer operated at a single location or whether his integrated operations were in multiple plants at different locations.

The Court, however, has now overruled the *Chrysler* precedents and held that, as a matter of law, functionally integrated plants located at different places in Michigan and in other states do not constitute a single "establishment." This means that an employer, operating integrated multiple plants, would not be entitled to the same tax treatment under the labor dispute disqualification section in the adjustment of his unemployment compensation tax rate as would an employer operating a single plant.

So construed, the statute would arbitrarily distinguish, on the one hand, between an employer whose operations are wholly within a single plant and, on the other hand, an employer whose functionally integrated operations are in multiple plants located in Michigan and other states.

We respectfully submit that the attempted distinction does not rest upon any difference bearing a reasonable and just relation to the objective of the statute involved.

I. AS CONSTRUED BY THE COURT, THE STATUTE IS INVALID UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS.

A. So construed, the statute violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and the Due Process Clause in Article II of Section 16 of the Constitution of the State of Michigan.

Subsections (1) through (4) of the labor dispute disqualification section define the conduct or circumstances constituting direct involvement by a claimant in a labor dispute. Thus, subsections (1) and (3) cover direct in-

volvement by voluntary stoppage of work; subsection (2) covers direct involvement by "participating" in, or "financing," or being "directly interested" in the labor dispute which caused the stoppage of work; and subsection (4) covers the situation where the stoppage of work is due to a labor dispute in some department or unit other than the one in which the claimant is employed.

As construed by the Court, however, the basic disqualification under the statute turns not upon direct involvement in fact (as provided in subsections (1) through (4)), but rather is made to depend upon the location of the employer's integrated operations. The Court said:

> "* * * the basic disqualification finding required in the first sentence of section 29(1)(b) must be legally made before the proviso relating to 'direct involvement' becomes effective, and before *considering* or *applying* the tests of direct involvement set forth in subsections (1), (2), (3) and (4)." (italics ours.)

Accordingly, under the Court's construction, unless the employer's situation falls within the Court's new concept of "a labor dispute in the establishment," a claimant is *not* disqualified regardless of his actual direct involvement in fact in the labor dispute which caused his own unemployment. In this posture, the fact of direct involvement becomes irrelevant where the employer's functionally integrated plants are located in Michigan and other states, and hence do not constitute a single "establishment" within the statute as construed. The Court said:

> "Thus, we hold that the direct interest finding of the appeal board under subsection (2) of section 29(1)(b), even if supported by the great weight of the evidence, does not, standing alone, occasion disqualification."

This holding results in arbitrary discrimination between employers, based upon a difference having no relation to the objective of the statute. Thus, an employer whose enterprise is comprised of two or more functionally integrated units at a single location is not subjected to an increase in his tax rate. This is so even where unemployment in one unit is caused by a stoppage of work due to a labor dispute in another unit, and even where claimants are directly involved in fact in such labor dispute.

But a multi-plant employer, under identical circumstances, is subjected to a tax increase stemming from the payment of unemployment compensation benefits, even though the only difference between the two enterprises is that his functionally integrated units are in different locations, whether in the same state or in other states.

The distinction thus made between functionally integrated operations at one location, and functionally integrated operations at different locations, have no reasonable bearing upon the basic question posed by the statute, namely, whether a particular claimant's unemployment was due to a stoppage of work existing because of a labor dispute in which he was directly involved. Obviously, direct involvement in fact should turn upon the employee's individual conduct or situation rather than upon the fortuitous location of his employer's operations.

Therefore, the attempted classification between operations at a single location, and operations at different locations, is arbitrary and results in denial of equal protection of the laws under the Federal Constitution and of due process of law under the Constitution of the State of Michigan.

In *Hartford Steam Boiler Inspection & Insurance Company v. Harrison,* 301 U. S. 459 (1937), there was a statutory discrimination between mutual and stock in-

surance companies writing insurance within the State of Georgia. The statute permitted mutual companies to act through agents who were salaried employees but forbade stock companies from doing so. It was held invalid as repugnant to the equal protection clause of the Federal Constitution. In reversing a judgment of the Supreme Court of Georgia sustaining the statute, the Supreme Court of the United States pointed out that, while there were indeed differences between stock and mutual insurance companies, nevertheless the discrimination made did not rest on any difference having a reasonable and just relation to the objective of the statute. The Court said (pp. 462-463):

> "* * * *mere* difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis' * * *. Discriminations are not to be supported by mere fanciful conjecture. * * * They cannot stand as reasonable if they offend the plain standards of common sense. * * *"
>
> "It is idle to elaborate the differences between mutual and stock companies. These are manifest and admitted. But the statutory discrimination has no reasonable relation to these differences. We can discover no reasonable basis for permitting mutual insurance companies to act through salaried resident employees and exclude stock companies from the same privilege. * * *"

The principle of the *Hartford* case was applied recently in *Morey v. Doud,* 354 U. S 457 (1957), where a statute required all firms selling or issuing money orders in the state to secure a license, but specifically excepted the American Express Company. In holding that the statute denied equal protection of the laws to a retail druggist proposing

to sell money orders to be issued by another firm, the Court said (p. 466):

> "Of course, distinctions in the treatment of business entities engaged in the same business activity may be justified by genuinely different characteristics of the business involved. * * * But distinctions cannot be so justified if the 'discrimination has no reasonable relation to these differences.' *Hartford S. B. I. & Inc. Co. v. Harrison*, 301 U. S. 459, 463 * * *."

Decisions under the due process clause of the Michigan Constitution are in accord. Thus, in *Sullivan v. Graham*, 336 Mich. 65 (1953), it was held that a statute providing for the licensing of residential builders, but specifically exempting any work or operation by a bank or trust company on any property owned by it, was invalid as violating not only the equal protection clause of the Federal Constitution, but also the due process clauses of both the Federal and Michigan State constitutions.

B. As construed, the statute is invalid under the Federal Constitution as imposing an undue burden on interstate commerce.

The discrimination made in this case (i.e., between (1) a single "establishment" at one location, and (2) functionally integrated operations in plants located in Michigan (and other states) not only results in denial of equal protection of laws and due process in respect of functionally integrated operations at different locations *within* the State of Michigan, but also imposes an undue burden upon interstate commerce. This results from the fact that an employer, with functionally integrated plants located in several states, is excluded from equal treatment in the determination of his

unemployment compensation tax, where the stoppage of work in his Michigan plant is due to a labor dispute in his plant outside the state. This is true even though the Michigan claimants are directly involved in the dispute. To come within the arbitrary classification, such an employer presumably would be obliged to confine his functionally integrated operations to a single-plant location within the state. Such discrimination is violative of the commerce clause of the Federal Constitution.

In *Dean Milk Company v. City of Madison, Wisconsin*, 340 U. S. 349 (1951), on appeal from the Supreme Court of Wisconsin, the Supreme Court of the United States held invalid a municipal milk ordinance which prohibited sale of pasteurized milk unless it had been processed and bottled at an approved plant within a radius of five miles from the city of Madison. In an action by a distributor of milk gathered from both Wisconsin and Illinois, but pasteurized in Illinois at places sixty-five and eighty-five miles from Madison, the Supreme Court of Wisconsin held that there was no violation either of the Fourteenth Amendment or of the commerce clause of the Federal Constitution. The Court said (*Dean Milk Co. v. City of Madison*, 257 Wis. 308, 43 N. W. 2d 480, 483):

> "* * * The five-mile limitation as to pasteurization plants is reasonable as applied to this plaintiff. It has no pasteurization plant within any reasonable distance of Madison. This provision of the ordinance was not adopted to exclude plaintiff, nor does it discriminate against it."

In reversing, the Supreme Court of the United States held that the ordinance imposed an undue burden on interstate commerce. Obviously, whether the pasteurizing plant was located within five miles from the city bore no relation.

the Court held, to the wholesomeness of the milk pasteurized by appellant in Illinois. The effect of the ordinance was to exclude wholesome milk pasteurized in Illinois. For a similar ruling, see the opinion of Attorney General of the State of Michigan, Foss O. Eldred, November 6, 1946, No. 0-5105.

The foregoing principle applies to a burden upon commerce arising from inequality in taxation as well as from exclusion of a product from commerce. In *West Point Wholesale Grocery Co. v. Opelika*, 354 U. S. 390 (1957), on appeal from the Court of Appeals of Alabama, the Supreme Court of the United States held invalid under the commerce clause a municipal ordinance which required an annual privilege tax of $250 to be paid by each firm engaged in the business of distributing at wholesale within the city groceries originating from points outside the city.

The state Court sustained the ordinance as not violative of either the Fourteenth Amendment or the commerce clause of the Federal Constitution. The Court said (87 So. 2d 661, 667):

> "The ordinance applies equally to deliveries of wholesale groceries in the City of Opelika, regardless of whether the transportation began within or without the State, therefore, defendant's contention that it differentiates between intrastate and interstate commerce is without merit. * * * The basis of classification is a reasonable one and applies equally to all within the class, * * *."

In reversing, the Supreme Court of the United States pointed out that the Opelika ordinance was discriminatory in that local wholesalers whose deliveries originated within the city were taxed on the basis of gross receipts, whereas those who had no local places of business and whose deliv-

eries originated outside the city were required to pay a flat annual fee of $250. The amount of the tax imposed on those dealing with deliveries originating outside the city thus bore no reasonable relation to either the volume of business done or to the returns from it. The tax therefore discriminated against those making such deliveries from shipments originating within the state (but outside the city) in the same manner as it discriminated against those engaged in making deliveries from interstate shipments. Nevertheless, such discrimination against one engaged in interstate commerce was held to be an unconstitutional burden upon interstate commerce. The Court said (354 U. S. at 392):

> "* * * The commerce clause forbids any such discrimination against the free flow of trade over state boundaries."

II. THE CONSTRUCTION ADOPTED BY THE COURT IS UNNECESSARY, ARBITRARY, AND DEFEATS THE EVIDENT PURPOSE OF THE DISQUALIFICATION PROVISION.

The first sentence of section 29(1)(b) provides disqualification of a claimant:

> "For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. * * *"

The discriminatory application of the statute in this case arises from a construction involving three steps: first, that the "labor dispute" must be in the "establishment" in which the claimant is employed; second, that such "labor

dispute" must be in effect be limited to a "strike"; and, third, that "establishment" must be limited to a single localized place of operation. To reach the discriminatory result, all three constructions must be adopted. None, however, is required by the statute as written.

A. The Section lends itself readily to interpretation avoiding discrimination.

The Section as a whole lends itself readily to the interpretation that the "labor dispute" need not be in the "establishment"; only the stoppage of work is required to be in the "establishment." The words "existing because of a labor dispute" are intended to characterize the nature of the work stoppage, and do not limit the application of the provision to situations where the labor dispute is in the "establishment" where claimant was employed.*

Such meaning is clearly apparent upon a reading of the section as though the words "existing because of a labor dispute" were set off by commas as follows:

> "For any week with respect to which his total or partial unemployment is due to a stoppage of work, existing because of a labor dispute, in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. * * *"

So read, disqualification would turn not upon the location of the employer's plants, but rather upon whether

*This was recognized by Circuit Judge (now Mr. Justice) Edwards in *Elbert E. Murray v. The Appeal Board,* Wayne Circuit No. 276-859, decided January 27, 1955, where he observed that under subsection (3), the claimants "could have brought a labor dispute, previously carried forward by others, into their own establishment by voluntary actions which effectively joined it and made it their own."

claimant was in fact directly involved in the labor dispute causing the stoppage of work in the "establishment" of his employment. As a result, all employers would be treated alike, regardless of whether their operations were single or multiplant in character.

Such an interpretation, not requiring the labor dispute to be in the "establishment," would also render the first sentence of the section consistent with all of the four subsections. Thus, it would be consistent with subsection (3), which expressly applies only where there is *no* labor dispute in the "establishment":

> "That at any time, there being *no* labor dispute *in the establishment* or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, * * *." (italics ours.)

The construction by the Court, however, that the labor dispute must be in the "establishment" before any disqualification can arise, precludes subsection (3), as written, ever from coming into operation. Such construction is contrary to the basic rule recently affirmed in *Melia v. Employment Security Commission,* 346 Mich. 544 (1956), at page 562:

> " 'No rule is better settled than, in construing a statute, effect must be given to every part of it. One part must not be so construed as to render another part nugatory, or of no effect.' * * *"

The Court's construction here, contrary to such rule, is forced and unnatural in that it not only gives rise to an unnecessary unconstitutional discrimination, but also creates an unnecessary inconsistency within the section itself.

Obviously, the construction is not the one intended by the drafters of the section as a whole.

B. The interpretation followed by the Referee, Appeal Board and Circuit Court in this case avoids arbitrary discrimination among employers.

The discrimination resulting from the Court's decision springs from the combined effect of the choice of arbitrary constructions of the terms "labor dispute" and "establishment". Discrimination can be avoided, however, either by giving to "labor dispute" its accepted meaning, or by adherence to the interpretation of "establishment" as inclusive of integrated operations.

(1) *Labor dispute.* The term "labor dispute" has long been well understood to be broader than the term "strike". It includes any controversy concerning hours, wages, or terms or conditions of employment. See, for example, the definitions of "labor dispute" in the Norris-LaGuardia Act (29 U. S. C. A. § 101), and in the National Labor Relations Act (29 U. S. C. A. § 151). Such well understood background for the meaning of the term "labor dispute" may well explain why the legislature saw no need to redefine "labor dispute" for the purposes of the Michigan Employment Security Act.

In any event, there is nothing in the Michigan statute to indicate any departure from the accepted meaning of the term. On the contrary, the term "labor dispute" is used in the first paragraph of the disqualification section (§ 29(1)(a)) in a context which makes clear that "labor dispute" was understood to be a generic term broader than, and inclusive of, the term "strike". It is there provided, in effect, that a claimant shall be deemed voluntarily unemployed, and therefore disqualified, if he shall refuse to accept

work; provided, however, that benefits shall not be denied for refusing to accept work "if the position offered is vacant due directly to a strike, lockout or other labor dispute." (This provision is required to be contained in state legislation in order to comply with the requirements of the Federal Social Security Act.)

But there is no need to determine whether "labor dispute", as used in the Michigan statute, must in all cases be construed as broadly as defined in the Federal act. It is sufficient here to note that, as used in the first paragraph of Section 29, the term "labor dispute" certainly is not limited to, but is broader than "strike," and includes disputes affecting wages, hours, and conditions of claimant's employment. *Chrysler Corp. v. Smith*, 297 Mich. 437, 451-454 (1941); *Unemployment Compensation Commission v. Aragon*, 329 U. S. 143, 149-151 (1946).

Applying this accepted concept, any labor dispute affecting the wages, hours or terms of employment of a claimant is deemed to be in the "establishment" where he is or was last employed, if the work stoppage is due to the labor dispute, regardless of the interpretation given to "establishment" and regardless of where, in the operations of his employer, the cause of the stoppage of the claimant's operations originated.

Instead of so applying the accepted definition of the term "labor dispute," the Court here chose arbitrarily, in effect, to limit the term to "strike"—a construction having no support either in the wording of the statute or in the background of common and statutory labor law, which defines the term as a dispute over conditions of employment.

Having construed "labor dispute" as limited to "strike", the Court stated that Michigan claimants cannot be found "responsible" for the "labor dispute" which caused their unemployment.

But the labor dispute section of the statute does not provide a test of disqualification based upon *responsibility* for a labor dispute. The test set out in Section 29(1)(b) is rather whether a claimant for benefits is "involved" in such labor dispute.

It is one thing to be *responsible* for a dispute, but it is an entirely different concept to be *involved* in it. Thus, even though claimants may not have been responsible for the labor dispute, under the findings of the Appeal Board they were directly involved and therefore properly disqualified.

(2) *Establishment.* The Court places particular reliance upon its quotation of part of the definition of "establishment", contained in Webster's New International Dictionary (2d Ed.), p. 874. But a more complete quotation of the definition, so far as pertinent, shows that establishment may refer to a commercial "organization" rather than to a physical location:

> "2. That which is established; as * * * c A permanent civil, military, or *commercial force* or *organization.* d The place where one is permanently fixed for residence or business; residence, including grounds, furniture, equipage, retinue, etc., with which one is fitted out; *also,* an *institution* or place of business, with its fixture and organized staff, as large establishment; a manufacturing establishment."

The choice between "organization" and "place of business' as alternative meanings for "establishment" must be made with reference to the objective in view.

By selecting the concept of business "organization", the disqualification provided in the Section is allowed to turn upon the claimant's own conduct or other direct involvement in the labor dispute causing the stoppage of work

within the functionally integrated organization of his employment. Accordingly, in *Chrysler Corporation v. Appeal Board of Michigan Unemployment Compensation Commission*, 301 Mich. 351 (1942), it was held that where the operations in various plants are functionally integrated and highly synchronized one with another, so that a slowdown in production in one of the integrated plants causes a stoppage in the other, the two must be deemed to be the same "establishment" within the meaning of the Act, particularly where the slowdown in one operation is aimed at affecting the labor conditions in all other operations integrated with it.

In attempting to distinguish the facts in this case from those in the *Chrysler* and *Spielman* cases, the Court said (p. 14):

> "On the other hand, the record in the cases considered herewith indicates for all plants concerned entirely separate and distinct plant managements and plant production schedules, as well as separate and distinct industrial relations and employment offices, employee seniority lists, local unions, and local labor-management agreements."

The facts are, of course, that the plant managements, the plant production schedules, the industrial relations and employment offices of the appellee are not "separate and distinct". They are interdependent functions and units of a closely-knit, highly-coordinated organization in which the administration of uniform scheduling, employment and other policies and practices is supervised and controlled through central office and divisional staffs. Similarly, although there are local unions and local agreements, the local unions are mere administrative units of the International Union, and the local agreements are merely implementations of the master agreement between the appellee

and the International Union covering such details as local seniority lists and shift preference.

Moreover, the Court's statement ignores the well known facts that the International Union was at all times the exclusive collective bargaining agent for all of the hourly rate production and maintenance employees of the appellee in all of its plants throughout the United States (as recited on page 4 of the Court's Opinion); the master agreement between the International Union and the appellee governed the wages, hours, and other conditions of employment of the claimants, as well as all other employees of appellee represented by the International Union; and that the Canton strike was expressly authorized by the International Union during the course of the labor dispute over the International Union's demands for reopening of the 5-year master agreement in the middle of its term.

In overruling the *Chrysler* decisions and limiting "establishment" to a single place of business, this Court has made irrelevant direct involvement in fact where the employer's functionally integrated operations are not limited to a single location and the work stoppage originates at a location other than the one in which the claimant is employed.

Such choices of meaning for the words "labor dispute" and "establishment" are unnecessary, as we have pointed out, and they lead to an arbitrary result which not only unconstitutionally discriminates against certain classes of employers, but perverts the basic purpose of the statute.

Under the decision of the Court in this case, the International Union, UAW, or any other exclusive collective bargaining agent, may convert the Michigan Employment Security Act into a weapon against the very employers whose contributions made possible payment of the benefits. Thus, the Union is put in a position to force every integrated

employer to finance a stoppage of his entire operations by the simple device of calling a strike at only one of his key operations.

III. THE CONSEQUENCES OF THE COURT'S DECISION ARE FAR-REACHING AND WILL SERIOUSLY AFFECT THE ADMINISTRATION OF THE MICHIGAN UNEMPLOYMENT COMPENSATION LAW IN ALL LABOR DISPUTE MATTERS.

The decision in this case, departing as it does from long established concepts and precedents, but failing to delineate precisely the scope and reach of what remains of the labor dispute disqualification provision, has already caused confusion and uncertainty. Without question, it will cause additional administrative problems and provoke litigation. It has aroused the interest or concern of all parties affected by the Michigan Employment Security Act.

Wherefore, Ford Motor Company respectfully requests that this application for rehearing be granted and that this case be set down on the docket of the next term of this Court for oral argument and that after rehearing and reargument this Court affirm the decision of the Circuit Court.

Respectfully submitted,

WILLIAM T. GOSSETT,
Attorney for Ford Motor Company.

WILLIAM T. GOSSETT,
RICHARD B. DARRAGH,
JOSEPH A. O'REILLY,
RICHARD A. FELLRATH,
Of Counsel.

Dated: January 30, 1959.

STATE OF MICHIGAN

IN THE

SUPREME COURT

[captions omitted]

Objections of Plaintiffs to Application for Rehearing

The unemployment of the claimants here in question occurred in May, 1953.

Ford Motor Company asks rehearing, after receiving the three carefully considered opinions of the Court January 12, 1959, in a case which has been under consideration by the Court ever since oral argument occurred in the April Term of 1958. The 146 page Brief of the Company and the 1,245 page Joint Appendix on appeal were filed in February, 1958. The issues involved herein were under consideration by the Court for almost one year prior to its decision.

Under the circumstances of this case, the classic statement on the subject of rehearing in BROWN, ET AL V. BROWN, ET AL, 64 Mich. 82, is peculiarly apt:

> "There is no reason given which was not given in the argument on the merits, which was very able and exhaustive, and presented every view in favor of complainants that zeal and ingenuity could offer. There was no failure of counsel to do anything that could be done . . .
>
> "It is, however, proper to say, without especial reference to this particular case, that we have heretofore pointed out and explained that a rehearing on the same facts and legal controversy is not properly to be granted, unless there has been some very peculiar assumption or defect on the first hearing, by which Court and parties have been misled. The case must be an extraordinary one in which an appellate Court can properly revoke its decision on any

> other ground. It is to be expected that counsel will always present in one argument what there is to be presented, and the Court will act on the whole record, or so much of it as is material." (82-83)

In the instant case the Court is unanimous in its agreement that CHRYSLER V. SMITH was unsound. The dissent states:

> "Were this a matter of first impression, I should find myself in agreement with Mr. Justice Edwards' interpretation of the word 'establishment' as, also, with that in the dissenting opinion in Chrysler Corporation v. Smith, 297 Mich. 438."

This unanimity occurred after due consideration of the alleged constitutional issues which Ford's Application for Rehearing points out (p. 2) were discussed at pages 77-84 of its original Brief.

The division in the Court occurs only on the issue of the weight to be given stare decisis. Ford advances no new points of fact or law on this subject which could serve as a possible basis for granting rehearing.

We respectfully request that Application for Rehearing be denied.

Respectfully submitted,

/sgd./ "ZWERDLING AND ZWERDLING"

ZWERDLING AND ZWERDLING
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A. L. ZWERDLING
Of Counsel

Dated: February 10, 1959.

Order Denying Application For Rehearing

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of February in the year of our Lord one thousand nine hundred and fifty-nine.

Present the Honorable

JOHN R. DETHMERS,
Chief Justice

LELAND W. CARR
HARRY F. KELLY
TALBOT SMITH
EUGENE F. BLACK
GEORGE EDWARDS
JOHN D. VOELKER
Associate Justices.

ALEXANDER PARK, ET AL., *vs.* MESC APPEAL BOARD, ET AL.	47065
JOHN L. DORSEY, ET AL., *vs.* MESC APPEAL BOARD, ET AL.	47124

A motion for rehearing having been heretofore submitted herein, it is hereby denied, with costs to plaintiffs.

Stay of Remittitur by State Supreme Court

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 26th day of February, in the year of our Lord one thousand nine hundred and fifty-nine.

Present the Honorable
JOHN R. DETHMERS,
Chief Justice
LELAND W. CARR
HARRY F. KELLY
TALBOT SMITH
EUGENE F. BLACK
GEORGE EDWARDS
JOHN D. VOELKER
Associate Justices.

ALEXANDER PARK, *et al.*, *Plaintiffs*, THOMAS M. KAVANAGH, Atty. Gen, *Intervening Plaintiff and Appellant*, *vs.* MESC APPEAL BOARD, *et al.*, *Defendants.*	47065
JOHN L. DORSEY, *et al.*, *Plaintiffs and Appellants*, *vs.* MESC APPEAL BOARD, *et al.*, and FORD MOTOR COMPANY, (*Appellant*), *Defendants.*	47124

In these causes a motion is filed by defendant Ford Motor Company for a stay of remittitur for the period of twenty days during which an appeal may be filed with the Supreme Court of the United States and thereafter until that Court passes upon such appeal, and an answer thereto having been filed by plaintiffs, and due consideration thereof having been had by the Court, it is ordered that the stay as requested be and the same is hereby granted.

Notice of Appeal

[cover page omitted]

STATE OF MICHIGAN

SUPREME COURT

ALEXANDER PARK, *et al.*, *Plaintiffs and Appellees*, THOMAS M. KAVANAGH, Attorney General, *Intervenor and Appellant*, *vs.* THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION, and FORD MOTOR COMPANY, *Defendants and Appellees.*	No. 47,065
JOHN L. DORSEY, *et al.*, *Plaintiffs and Appellants*, *vs.* THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION, and FORD MOTOR COMPANY, *Defendants and Appellees.*	No. 47,124

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Ford Motor Company, the appellee above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Michigan entered on Janu-

ary 12, 1959, reversing the decision of the Circuit Court of Wayne County, Michigan, and granting unemployment compensation benefits to Alexander Park, et al., and John L. Dorsey, et al.

This appeal is taken pursuant to 28 U. S. C. § 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Volumes I, II and III of the Joint Appendix on Appeal.

(b) The decision of the Appeal Board, Appendix A to brief of Intervenor-Appellant in Supreme Court of Michigan, pp. 1a-30a.

(c) Opinion of the Circuit Court of Wayne County, Appendix B to same brief, Id., pp. 31a-88a, including notation of grant of leave to appeal on p. 95a (Appendix E.).

(d) The opinions of the Supreme Court of the State of Michigan and of Dethmers, C. J., dissenting and Black, Jr., concurring.

(e) The order of the Supreme Court of the State of Michigan, June 3, 1957, consolidating the appeals.

(f) The Judgment (order) of the Supreme Court of the State of Michigan reversing the judgment of the Circuit Court.

(g) The application for rehearing filed by Ford Motor Company in the Supreme Court of the State Michigan.

(h) The order of the Supreme Court of the State of Michigan denying said application for rehearing.

Notice of Appeal

(i) The docket entries in the Supreme Court of Michigan.

(j) This Notice of Appeal.

III. The question presented by this appeal is whether the statute involved (Section 29(1)(b) of the Michigan Employment Security Act, Michigan Statutes Annotated § 17.531; C. L. 1948 § 421.29), as construed by the Michigan Supreme Court in these cases, is invalid under the Federal Constitution because:

(1) The classification established by the statute as thus construed is arbitrary and unreasonable and results in discrimination against the employer operating functionally integrated units, geographically separated, by increasing its contribution rate, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, and

(2) Such increase in the contribution rate imposes an undue burden upon commerce in violation of the Commerce Clause of the Federal Constitution, where the employer operates functionally integrated units at different locations within and without the state, and the work stoppage within the state is caused by a labor dispute in which claimants are directly involved, occurring outside the state.

Respectfully submitted,

WILLIAM T. GOSSETT,
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WILLIAM T. GOSSETT,
RICHARD B. DARRAGH,
JOSEPH A. O'REILLY,
RICHARD A. FELLRATH,
Of Counsel

Dated: February 26, 1959

FILE COPY

OFFICE OF THE CLERK, U.S.
MAY 11 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 831

FORD MOTOR COMPANY,
Defendant and Appellant,
vs.
ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,
THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees

FORD MOTOR COMPANY,
Defendant and Appellant,
vs.
JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

Nos.....

FORD MOTOR COMPANY,
Defendant and Appellant,
vs.
ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,
THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees

FORD MOTOR COMPANY,
Defendant and Appellant,
vs.
JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,
THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS

Appellees in the above-entitled cause, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United

States, move to dismiss on the grounds that (1) it does not present a substantial federal question; (2) the federal questions sought to be reviewed were not timely or properly raised, or expressly passed on; and (3) the judgments of the Supreme Court of Michigan rest on an adequate non-federal basis.

OPINIONS BELOW

The question appellant seeks to review is considered in the opinions of the Supreme Court of Michigan in 355 Michigan 103 of the Official Michigan Report and in 94 N. W. (2d) 407, reproduced in the Jurisdictional Statement, Appendix A (pp. 29-73).[1]

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 62 Stat. 929 (1948), 28 U. S. C. §1257 (2). For the reasons set forth herein the Appeal should be dismissed.

STATUTE INVOLVED

The pertinent provisions of the Michigan Employment Security Act[2] are as follows: (References in Jurisdictional Statement contain emphasis added by appellant which appellees deem questionable in some instances)

> "Sec. 2: The legislature acting in the exercise of the police power of the state declares that the pub-

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[1] Page references are to Jurisdictional Statement, unless otherwise indicated.

[2] Mich. Comp. Laws §§421.1-.62 (1948), Mich. Stat. Ann. §§17.501-.566 (1951), as amended.

lic policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state."[3]

"Sec. 29. (1) An individual shall be disqualified for benefits:

* * * * *

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then

[3] Mich. Comp. Laws §421.2 (1948), Mich. Stat. Ann. §17.502 (1951).

employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."[4]

[4] Mich. Comp. Laws §421.29 (1948), Mich. Stat. Ann. §17.531 (1951).

QUESTION PRESENTED

If any federal question has been properly raised and presented, the Jurisdictional Statement does not accurately state such question. We restate what appellees believe to be the only possible federal question raised:

> May the State of Michigan allow unemployment benefits without disqualification to persons unemployed through no fault of their own when their involuntary unemployment at plants of the Ford Motor Company in Detroit, Michigan results from a strike in a Canton, Ohio, Ford plant?

In addition, appellees, by their Motion to Dismiss, raise the following issues:

(1) It does not present a substantial federal question;

(2) The federal questions sought to be reviewed were not timely, or properly raised, or expressly passed on; and

(3) The judgments of the Supreme Court of Michigan rest on an adequate non-federal basis.

STATEMENT OF THE CASE

The Supreme Court of Michigan put the issue clearly in the opening paragraph of the Opinion of Justice Edwards, as follows:

> "* * * we conclude that they (these cases) turn upon the answer to a relatively simple legal question —Does the term 'the establishment,' as used in the Michigan employment security act, encompass both

Ford plants in the vicinity of Detroit, Michigan, and the Ford forge plant at Canton, Ohio, for the reason that the former cannot operate long without the latter?" (Ex. A, p. 30.)

As to the facts, the Court said:

"In the lengthy record which contains much hotly-disputed testimony, 2 facts appear to be clear and beyond dispute: (1) that the employees concerned were laid off either as a direct or indirect result of the failure of forgings previously manufactured at the Canton forge plant to arrive at departments or plants where they would customarily be incorporated into subassemblies and assemblies of Ford products; (2) that no strike vote, call, walkout, or picketing occurred in any of the 3 plants under consideration, and that all employees concerned continued work until laid off by the company (indeed some of them returned to work on call during the period of the Canton forge plant strike), and that other union employees, whose operations were not affected by the lack of forgings, continued work in each of the 3 plants through most or all of the entire Canton strike period." (Ex. A, p. 31.)

As to the subject matter of the dispute, the Court said:

"The briefs of claimants in these cases argue that the Canton forge plant strike was over purely local issues, and was unrelated to the negotiations for reopening and modification of the master agreement. It is the company's position that the Canton forge plant strike was a device employed by the union for the purpose of forcing modification of the master agreement. In either event, it appears that the settlement of the Canton forge plant strike, and the modification of the master agreement, both occurred on May 25, 1953, following by 3 days a similiar modification of a national agreement between the UAW and the General Motors Corporation signed on May 22, 1953." (Ex. A, p. 32.)

The Court then comments on the term "establishment" as follows:

> "While we believe the appeal board and the circuit judge were right in terming the interpretation of the word 'establishment' the 'pivotal issue' of this case, we believe they were wrong in extending the definition of 'the establishment' employed in *Chrysler v. Smith, supra.* Indeed, on the basis of what has been said, we feel constrained to hold that to the extent that *Chrysler v. Smith*, 297 Mich. 438 (135 A. L. R. 900), adopted 'integral functioning' as the basic test of the extent of 'the establishment' in the Michigan employment security act (CLS 1952, §421.29(1) (Stat. Ann. 1953 Cum. Supp. §17.531(1)), it is overruled." (Ex. A, pp. 52-53.)

It concludes:

> "A reading of section 29(1)(b) indicates clearly that it applies only to disqualification of 'an individual' 'for any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed.' That there was a stoppage of work is obvious, as is the fact that there was a labor dispute. Plainly, the labor dispute which caused the stoppage was, however, in the Canton forge plant which we have held to be no part of 'the establishment' in which claimants were last employed. Michigan claimants, under our act and on this record, cannot be found responsible for that dispute unless we indulge the principal-agent argument previously quoted from the Georgia court which we have rejected."

> "Further, the basic disqualification finding required in the first sentence of Section 29(1)(b) must be legally made before the proviso relating to 'direct involvement' becomes effective, and before considering or applying the tests of direct involvement set forth in subsections 1, 2, 3 and 4." (Ex. A, p. 54.)

REASONS FOR GRANTING MOTION TO DISMISS

(1) A substantial federal question is not presented:

Appellant argues, first, that there is a substantial federal question involved because:

> "As now construed by the Supreme Court of Michigan, however, the basic disqualification under the statute turns not upon the employee's direct involvement in fact, but rather upon the location of the employer's integrated operations." (17)
>
> • • • • •
>
> "The classification is therefore arbitrary and invalid under the Equal Protection Clause of the Federal Constitution." (18)

Appellant argues, second:

> "The discrimination made in this case • • • also infringes the Commerce Clause by imposing an undue burden upon interstate commerce where, as here, the labor dispute occurs in a plant outside the State." (20-21)

(a) The Equal Protection Clause:

Appellant asserts:

> "The controlling principles were recently stated in *Allied Stores of Ohio v. Bowers* (No. 10, Oct. Term 1958, February 24, 1959)." 3 L. ed. 2d 480 (1959), (18).

culling out words of comfort from a portion of that decision. Appellant fails to set forth the language which follows immediately after the quoted statement, and which lays down the rule of the case:

> "'If the selection or classification is neither capricious nor arbitrary, and rests upon some reason-

able consideration of difference or policy, there is no denial of the equal protection of the law.' *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573. *State Board of Tax Comm'rs v. Jackson*, 283 U. S. 527, 537. That a statute may discriminate in favor of a cerain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy. *American Sugar Ref. Co. v. Louisiana*, 179 U. S. 89; *Stebbins v. Riley*, 268 U. S. 137, 142."

* * * * *

"* * * Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Quong Wing v. Kirkendall*, 223 U. S. 59; *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *State Board of Tax Comm'rs v. Jackson, supra*, 283 U. S. at 527." 3 L. ed. 2d 480, 485-86 (1959).

Concurring, Mr. Justice Brennan, with whom Mr. Justice Harlan joins, says:

"* * * the utmost latitude, under the Equal Protection Clause, must be afforded a State in defining categories of classification." 3 L. ed. 2d 480, 488 (1959).

The instant case is not the first time that the cry of "equal protection" has been raised, without success, before this Court. *Lawrence Baking Company v. U. C. C.*, 308 Mich. 198, 13 N. W. (2d) 260, 154 A. L. R. 660 (1944), in which petition for writ of certiorari was denied by the Supreme Court of the United States, October 9, 1944, 323 U. S. 738, was a case in which:

"* * * striking employees filed claims with defendant commission for unemployment compensation benefits. * * *" 308 Mich. 198, 203.

The Supreme Court of Michigan allowed payment of benefits on the ground that the striking employees had been replaced and there was no "stoppage of work" in the establishment concerned as a result. It, therefore, held that the disqualification was inapplicable. Employer's attack raised the issues of "due process and equal protection of law". The Court rejected this attack, quoting in its support *Carmichael v. Southern Coal and Coke Company*, 301 U. S. 495, which upheld the Alabama Unemployment Compensation Act, as follows:

> "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it." (at 509)

The Michigan Court commented:

> "Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not result in arbitrary or unjust discrimination between employers." (at 212)

Also see *Lower Vein Coal Co. v. Industrial Board of Indiana, et al.*, 255 U. S. 144; *Ward and Gow v. Himan Krinsky, et al.*, 259 U. S. 503, involving construction of state Workmen's Compensation Acts, to the same effect.

Since enactment of the ingenious tax device in the Social Security Act, 49 Stat. 620, 42 U. S. C. §§301-1305, which induced immediate passage in 1936-7 of unemployment compensation laws in every one of the fifty-two States and

Territories, the Supreme Court of the United States has consistently rejected all attempts to obtain review of decisions of state courts interpreting such statutes. As was said in *Lower Vein Coal Co., supra*, as far back as 1920:

> "The principle of law involved and the power of a state to distinguish and classify objects in its legislation have been too often declared, too abundantly and variously illustrated, to need repetition * * *." (at 147)

The classification here involved is one which groups by plant location, challenged by an appellant urging classification by functionally integrated corporate entity. Every unemployment compensation law in the land contains some form of labor dispute disqualification which follows a similar method of classification, namely, by physical location. In thirty-nine states, and the District of Columbia, the classification hinges upon whether or not the labor dispute in question occurs in the "factory, establishment, or other premises". Eight states, including Michigan, speak of "the establishment". One state, Idaho, speaks in terms of "premises". (See Commerce Clearing House: *Unemployment Insurance Reporter.*) Surely there is no basis for claim that this method of classification in Michigan is "invidious or palpably arbitrary". *Allied Stores of Ohio, Inc.*, 3 L. ed. 2d 480 (1959).

(b) The Commerce Clause:

Appellant complains that if it wishes to avoid payment of benefits to its involuntarily unemployed workers under the circumstances here, it can do so only by "moving all such operations to a single location within the State" (21). What is the "undue burden" here in question?

Under the Michigan Statute benefits are paid out of a pooled fund created and maintained by taxation of em-

ployers (Section 17(a)).[5] However, the tax rate of any employer *may* be, but not necessarily is, affected by the payment of benefits to his employees or former workers in any particular case. The Commission maintains a separate "rating account" for each employer, which includes the total wages paid by employer and total benefits charged against employer's record (Sec. 17(a)).[6] A "rating account percentage" is obtained by dividing the said benefits by the said payroll (Sec. 18(c)).[7] Based upon this, an employer's tax rate may vary between .0% and 4.0% of his payroll (Sec. 19(a)).[8] There is nothing in the record concerning what, if any, effect the payment of the claims here in question will have upon the tax rate of Appellant. In any event, the tax imposed to create and maintain the fund out of which unemployment compensation benefits are paid here is for a public purpose expressly declared in an enactment falling within the range of legislative police powers, and the policy involved is one with which the courts never have interfered.

Any contention that the interpretation of the Statute by the Michigan Court places an undue burden on interstate commerce must perforce be based on the fact that Ford Motor Company is a foreign corporation doing business in Michigan, and engaged in selling its products throughout the United States. The fact that the Court awarded

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[5] "All contributions to the said fund shall be pooled and available to pay benefits to any individual entitled thereto under this act, irrespective of the source of such contributions." Mich. Comp. Laws §421.17(a) (1948), as amended, Mich. Stat. Ann. §17.518 (a), (Supp. 1957).

[6] *Ibid.*

[7] Mich. Comp. Laws §421.18 (c) (1948), as amended, Mich. Stat. Ann. §17.519 (c) (Supp. 1957).

[8] Mich. Comp. Laws §421.19 (a) (1948), as amended, Mich. Stat. Ann. §17.520 (a) (Supp. 1957).

benefits to Michigan workers laid off as a result of a strike in a plant located in Canton, Ohio, is not significant. In determining if an undue burden exists, location of the struck plant in Canton, Ohio, or in Northern Michigan is a distinction without a difference insofar as the legal principle is concerned.

If an increase in the tax rate would not be an undue burden had the strike occurred in a Northern Michigan plant of the Company, the occurrence of the strike in Ohio creates no greater impact.

What appellant is attempting to secure is a ruling that, with respect to any corporation engaged in interstate commerce within the boundaries of the State of Michigan, the allowance of unemployment compensation benefits to innocent workers laid off in one plant by reason of a strike in another physically separated plant of the same corporation creates an undue burden on interstate commerce.

The Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1954, provides for crediting against the 3% payroll tax levied on employer's (68A Stat. 439 (1954), 26 U. S. C. §3301) contributions paid under State Unemployment Compensation Laws (68A Stat. 439 (1954), 26 U. S. C. §3302), provided such state laws are certified as containing certain minimum standards. Reference to these standards (68A Stat. 443 (1954), 26 U. S. C. 3304(a)) establishes that they in no way required that *any* disqualification be imposed by a state for unemployment due to a labor dispute in order for such certification to be granted.

Per contra, sub-section (5) of 68A Stat. 443 (1954), 26 U. S. C. §3304(a) provides that:

> "Compensation shall not be denied in such State to any otherwise eligible individual for refusing to

accept new work under any of the following conditions:

"(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; * * *."

This is the *only* reference to the effect of a labor dispute.

No constitutional inhibition would prevent the Michigan Legislature, if it so chose, from amending the labor dispute disqualification to pay benefits to *strikers* while they are on strike.[9]

Nothing in the Constitution would prevent Michigan, as a second alternative, from paying benefits to all workers unemployed in the same corporation *except* the strikers, *whether unemployed in the same plant or not.* If ten key men struck in the Ford Rouge Plant in Detroit, Michigan, causing the unemployment of the tens of thousands of workers in the *same* plant, then not only would those consequently laid off in *other* plants receive benefits, but those laid off in the *same* plant would be paid as well.

Nor is any complaint made of the fact that when a strike by the United Automobile Workers Union in a supplier corporation *not* part of its corporate structure causes a shutdown at Ford, its consequently laid off employees do in

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[9] Note *Lawrence Baking Company v. UCC*, 308 Mich. 198 (1944), 13 NW 2d 260, 154 ALR 660, *cert. denied*, 323 U. S. 738.

Both New York and Rhode Island currently pay benefits to workers on strike after a stated number of weeks of unemployment. Rhode Island General Laws of 1956, as amended, Chapter 44, Sec. 28-44-16; Consolidated Laws of New York, Recodified by Chapter 706 L, 1944, as amended, Title 7, Section 592.1.

"The Ford Motor Company * * * operates manufacturing plants in * * * Buffalo and Green Island, New York." Page 10(b), Joint Appendix on Appeal.

See reference by Michigan Supreme Court below to *Macheinski v. Ford Motor*, Exhibit "A", page 45, which Ford did not attempt to appeal.

fact receive their unemployment compensation. (Chrysler-Detroit employees recently experienced this situation when laid off because of strike at another corporation which is the supplier of glass to Chrysler.)

How then is it unconstitutional to provide, as does the Michigan law in this case, that those *involuntarily* laid off in one plant because of a strike in another plant of the same corporation are not disqualified, based on a method of classification which categorizes on the basis of whether or not the dispute occurred in the "establishment" in which claimant was last employed?

(c) The Concept of "Fair Play":

Appellart refers to "another basic constitutional requirement—that of fair play", which it describes as lodging "in the overlap of due process with equal protection." (20) In *International Shoe Company v. State of Washington*, 326 U. S. 310, Mr. Justice Black comments:

> "There is a strong emotional appeal in the words 'fair play,' 'justice,' and 'reasonableness,' but they were not chosen by those who wrote the original Constitution or the Fourteenth Amendment as a measuring rod for this court to use in invalidating State or Federal laws passed by elected legislative representatives. No one, not even those who most feared a democratic government, ever formally proposed that courts should be given power to invalidate legislation under any such elastic standards. * * * For application of this natural law concept, whether under the terms 'reasonableness,' 'justice,' or 'fair play,' makes judges the supreme arbiters of the country's laws and practices. This result, I believe, alters the form of government our Constitution provides. I cannot agree." (at 325-6)

If this concept were to be invoked here, it would argue in favor of payment of benefits to these involuntarily unemployed workers, laid off because of a strike in another plant far removed from their places of employment.

(2) The federal questions sought to be reviewed were not timely or properly raised, or expressly passed on:

Appellant asserts:

> "The objections upon Federal grounds presented by the application for rehearing could not have been made until after the decision of the State Supreme Court." (14)

Prior to the decision of the Supreme Court of Michigan, the instant cause was the subject of two levels of administrative determination by the Michigan Employment Security Commission, a decision of a Commission Referee after lengthy hearings, a decision by the MESC Appeal Board, and a decision by the Circuit Court for the County of Wayne. Appellant made no attempt to claim that federal questions were involved until it filed its brief with the Supreme Court of Michigan. Only on the occasion of its application for rehearing before the State Supreme Court did it for the first time squarely attack this issue. Review of the three Opinions of the Supreme Court of Michigan (30-73), and the Opinion of the State's Circuit Court below (73-123) reveals that the federal questions were not passed upon by the State Courts.

Michigan law is well settled that constitutional issues will not be considered by the State Supreme Court unless raised previously in the lower court. In *City of Dearborn v. Village of Allen Park,* 348 Mich. 449 (1957), the Court says:

> "It is also urged by plaintiffs that the action taken by the board of supervisors deprived Ford Motor Company and Detroit, Toledo and Ironton Railroad Company of their constitutional rights. We note that this issue was not raised in the lower court. It is now too late to raise this issue." (at 455)

See *Stembridge v. State of Georgia*, 343 U. S. 541, 547-8; *Bailey v. Anderson*, 326 U. S. 203, 206-7; *Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 309, concerning effect of this procedural deficiency.

Appellant was free to raise the issue in the Circuit Court of the State, as was done in *Lawrence Baking Company v. U. C. C., supra*, thus occasioning consideration and decision by the Supreme Court of Michigan of the constitutional issue.

In an effort to avoid this infirmity, Appellant speaks in terms of "surprise" with reference to the failure of the Supreme Court of Michigan to follow *Chrysler Corp. v. Smith, et al.*, 297 Mich. 438; 298 N. W. 87 (1941). Aside from the difference in the fact situation involved in *Chrysler*, pointed out by the Michigan Supreme Court (Ex. A, 40), we find no Michigan Supreme Court cases affirming *Chrysler* prior to the instant cause. Contrary to the impression conveyed by the Jurisdictional Statement (13), Chrysler is not even mentioned in *General Motors Corporation v. Unemployment Compensation Commission*, 321 Mich. 724, 34 N. W. 2d 497 (1948), or in *Buzza v. Unemployment Compensation Commission*, 330 Mich. 223, 47 N. W. 2d 11 (1951). The reference in *Clapp v. Appeal Board*, 325 Mich. 212, 38 N. W. 2d 325 (1949), is in the context of a different fact situation in which the employees in question were on strike and the issue of "establishment" was not involved.

Appellant asserts that *Herndon v. Georgia*, 295 U. S. 441 (1935) may be distinguished from the instant cause, and then quotes what it describes as "the recognized rule as stated in that case (p. 444)" (Jurisdictional Statement, p. 16). Once again appellant engages in self-serving selection. In the immediately preceding sentences the Court says:

> "The long-established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing comes too late, unless the court actually entertains the question and decides it." (citing numerous cases)
>
> "Petitioner, however, contends that the present case falls within an exception to the rule—namely, that the question respecting the validity of the statute as applied by the lower court first arose from its unanticipated act in giving to the statute a new construction which threatened rights under the Constitution." (pages 443-444)

It is of interest to note that the three Opinions filed in the instant cause by the Supreme Court of Michigan are unanimous in their agreement as to the proper interpretation of the statutory language here in question. Dissent by two members of the Court is based solely on obeisance to *stare decisis*. (See concurring Opinion of Justice Black, Ex. A, pp. 63-72, and dissenting Opinion of Chief Justice Dethmers, Ex. A, pp. 72-73.)

(3) The Judgments of the Supreme Court of Michigan rest on an adequate non-federal basis:

It is clear here that the decision of the State Court was based on an adequate non-federal ground, even aside from the fact that a federal question was not properly asserted. The decision that the "establishment" in which these laid off Michigan workers were last employed did not include within its scope the Canton, Ohio plant of Ford Motor

Company was wholly tenable. It was not "so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question." *Enterprise Irrig. District v. Farmers Mut. Canal Company*, 243 U. S. 157, 164.

Adequate and independent non-federal, state grounds of decision existed. This court will not review judgments of state courts in such cases. *Herb v. Pitcairn*, 324 U. S. 117, 125-6. The decision by the state court here clearly required no reference to a federal question, the non-federal grounds being sufficiently broad to maintain the state court's judgments. *Eustis v. Bolles*, 150 U. S. 361, 369-70.

The decision turned upon the proposition that "establishment" is "the place where one is permanently fixed for residence or business; * * *" (38), and that the concept of "integral functioning" as a basic test of the extent of "the establishment" in the Michigan Employment Security Act was rejected (53).

CONCLUSION

It is respectfully submitted that this Court does not have jurisdiction of these appeals, and therefore, should grant this Motion to Dismiss.

Respectfully submitted,

ABRAHAM L. ZWERDLING,
Attorney for Alexander Park, et al. and John L. Dorsey, et al.

HAROLD A. CRANEFIELD,
Of Counsel.

Dated: May 9, 1959.

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MAY 12 1959
JAMES R. BROWNING, Clerk

SUPREME COURT OF THE UNITED STATES

October Term, 1958

Nos. 831

On Appeal from the Supreme Court of Michigan

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

ALEXANDER PARK, et al.,
Plaintiffs and Appellees,

THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

FORD MOTOR COMPANY,
Defendant and Appellant,

vs.

JOHN L. DORSEY, et al.,
Plaintiffs and Appellees,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

BRIEF OF THE ATTORNEY GENERAL OF MICHIGAN, ~~INTERVENOR~~ Appellee

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SPEAKER-HINES AND THOMAS, INC., LANSING, MICH.—1959

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THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Defendants and Appellees.

BRIEF OF THE ATTORNEY GENERAL OF MICHIGAN, INTERVENOR.

I

The Attorney General of Michigan intervened in these proceedings involving the claims for unemployment benefits of respondent, Alexander Park, and some 5,700 claimants when they were pending before the appeal board. He has continued as intervenor because of the importance to

all of the people of the state of Michigan of judicial interpretation of the word "establishment" as used in section 29(1)(b)[1] of the Michigan employment security act.

Under Michigan law, the Attorney General of Michigan may intervene in any action at any stage of the proceedings in order to protect any right of the state or of the people of the state of Michigan by virtue of the following statute:[2]

> "• • • the attorney general • • • may, when in his own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested."

II

The brief of respondents Alexander Park, et al, and John L. Dorsey, et al, appellees, is adopted herein by reference. In addition we urge the following grounds in support of the motion to dismiss filed therein:

---

[1]

"Sec. 29 (1) An individual shall be disqualified for benefits:

"• • •

"(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: • • •."

[2]

CL 1948 § 14.28; Henderson's Mich Stat Ann § 3.181.

1. **The Federal questions, if any, were not timely raised in the court below.**

Proceedings in the instant case were held before a hearing officer, an appeal board, and the Wayne county circuit court prior to being presented to the Michigan Supreme Court for decision.[3] Not until petitioner filed its brief with the Michigan Supreme Court did it raise the claim that federal questions might be involved herein. (See petitioner's appendix pp 36a - 37a). Appellant's reference to the fact that there might be federal questions involved was in the form of a suggestion that if the Chrysler organizational concept of establishment was not adopted by the Michigan Supreme Court to extend beyond state lines "serious question might arise as to the constitutional validity of the Michigan employment security act, particularly with respect to those provisions which purport to levy a tax upon interstate employers, whose integrated operations extend beyond the boundaries of the State of Michigan." This did not place the federal question squarely at issue before the Michigan Supreme Court.[4]

Following the Michigan Supreme Court's decision which was decided solely on state law, appellant attempted to raise federal issues by filing a petition for rehearing. The Michigan supreme court denied this petition without comment.

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[3]

Hearing and appeal procedures are set forth in Sections 32 - 38 of the Michigan employment security act.

[4]

Briefs and records before state courts are not ordinarily part of the record filed in the supreme court and cannot be used to establish that a federal question was raised.

Live Oak Assn. v. R.R. Comm., 269 U.S. 354;
Lynch et al v. N.Y. ex rel Pierson, 293 U.S. 52, 54.

Under Michigan law, constitutional issues will not be considered by the state supreme court unless raised in the lower court. See *City of Dearborn v. Village of Allen Park,* 348 Mich 449 where the Court stated:

> "It is also urged by plaintiffs that the action taken by the board of supervisors deprived Ford Motor Company and Detroit, Toledo and Ironton Railroad Company of their constitutional rights. We note that this issue was not raised in the lower court. It is now too late to raise this issue. See *Kellom v. City of Ecorse,* 329 Mich 303."

Ample opportunity exists under Michigan practice for a litigant to raise a constitutional issue in the trial court. In a previous case, involving the interpretation of the instant statute, the plaintiff specifically raised federal questions in the circuit court. The same were afterwards considered and rejected by the Michigan Supreme Court. See *Lawrence Baking Co. v. Unemp. C.C.,* 308 Mich 198 (cert denied 323 U.S. 738).

This Court has held that when the federal constitutional issue was not raised in the trial court as required by state law, but was raised for the first time in a petition for rehearing addressed to the state intermediate court, the highest state court's action in refusing without opinion to hear it, precludes review on certiorari by this Court. See *Stembridge v. Georgia,* 343 U.S. 541, p 547.

See also *Herndon v. Georgia,* 295 U.S. 441, 443, in which this Court stated:

> "The Federal question was never properly presented to the State Supreme Court unless upon motion for rehearing; and that the court then refused to con-

> sider it. The long established rule is that the attempt to raise a federal question after judgment comes too late, unless the court actually entertains the question and decides."

Since appellant did not raise the constitutional issues before the state trial court as is required by Michigan procedure, its attempt to raise them on rehearing came too late and should preclude review by this Court.

Appellant concedes the force of the above argument, but attempts to justify its right to raise the alleged federal grounds in the petition for rehearing of the Supreme Court decision by claiming that "No Federal right or claim of right of appellant had been infringed prior to the decision of the State Supreme Court." (14)[5] In other words, its failure to prevail before the Supreme Court on prior asserted grounds gave it the right to begin the litigation anew by raising federal grounds in a petition for rehearing. In support of this contention it cites the language of Justice Cardozo in *Great Northern R.R. Co. v. Sunburst Oil & Refining Co.*, 278 U.S. 358:

> "The rule, general as it is, does not • • • apply where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a federal right."

We do not interpret Justice Cardozo's language to mean what appellant says it does. As we read his statement, Justice Cardozo meant that if the state decision results in a novel interpretation of law, which gives rise to federal

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[5] Page references are to Jurisdictional Statement, unless otherwise indicated.

issue, which could not have been anticipated at the beginning of the litigation, the appellant is entitled to raise the federal question for the first time in a petition for rehearing before the state court. In *Herndon v. Georgia, supra*, p 444, the Court stated:

> "Petitioner, however, contends that the present case falls within an exception to the rule — namely, that the question respecting the validity of the statute as applied by the lower court first arose from its unanticipated act in giving to the statute a new construction which threatened rights under the Constitution. There is no doubt that the federal claim was timely if the ruling of the state court could not have been anticipated and a petition for rehearing presented the first opportunity for raising it. Saunders v. Shaw, 244 U.S. 317, 320, 61 L. ed. 1163, 1165, 37 S. Ct. 638; Ohio ex rel. Bryant v. Akron Metropolitan Park Dist., 281 U.S. 74, 79, 74 L. ed. 710, 715, 50 S. Ct. 228, 66 A.L.R. 1460; Missouri ex rel. Missouri Ins. Co. v. Gehner, 281 U.S. 313, 320, 74 L. ed. 870, 875, 50 S. Ct. 326; Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673, 677, 678, 74 L. ed. 1107, 1111, 1112, 50 S. Ct. 451; American Surety Co. v. Baldwin, 287 U.S. 156, 164, 77 L. ed. 231, 236, 53 S. Ct. 98, 86 A.L.R. 298; Great Northern R. Co. v. Sunburst Oil & Ref. Co., 287 U.S. 358, 367, 77 L. ed. 360, 367, 53 S. Ct. 145, 85 A.L.R. 254. The whole point, therefore, is whether the ruling here assailed should have been anticipated."

The federal issues, if any, were present in this case from the beginning. They should have been raised by the appellant in the trial court as required by Michigan procedure. Appellant did not do so in reliance upon *Chrysler v. Smith*, 297 Mich 438 which it rashly anticipated would be followed by the Michigan Court and would be sufficient

to sustain its side of the case. However, there was no guarantee that Chrysler would be followed even by the trial court, where appellant should have raised federal issues, inasmuch as the question of whether the plants of an employer located in another state could be combined with other plants of the same employer located in Michigan so as to form "the establishment" set forth in Section 29 (1)(b) was a novel one which had never been passed upon by the Michigan Supreme Court. All the plants in Chrysler were located in the Detroit area within 11 miles of each other. Here the plant in which the strike occurred was located in Canton, Ohio (40). Under these circumstances, the trial court could have held that it was not bound by *Chrysler* and it could have ruled that the Canton, Ohio plant was not part of "the establishment" mentioned in Section 29(1)(b) of the Michigan employment security act.

Moreover, there was no certainty, that having prevailed in the trial court on the strength of Chrysler, Ford would again prevail in the State Supreme Court on the basis of that decision. Since, as we have stated, the outstate strike presented an issue of first impression in Michigan, the position which the Michigan Supreme Court would adopt was doubtful. And even if the factual situation in this case had been the same as that in *Chrysler*, the Michigan Supreme Court was still free to reverse its prior decision if it felt that it would subserve the ends of justice to do so.

Furthermore, eight of the nine states courts before whom the same questions had been litigated, had answered in the negative Ford's claim that the term "establishment" as used in the employment security acts encompassed Ford plants located in other states, for the

reason that the former cannot operate long without the latter (30). In none of these states did Ford seek appeal to this Court. Certainly, the fact that the weight of authority was so overwhelming against Ford's claims, should have given it reason to anticipate that the Michigan Court would overrule *Chrysler* and join the courts of her sister states in rejecting the "functional integration" theory for determining the extent of "the establishment" advocated by appellant.

It is true the "functional integration" doctrine propounded in *Chrysler* had been the law in Michigan for a period of 17 years. But the doctrine had not been challenged prior to the present decision. Even when issued *Chrysler* had been subjected to a powerful and vigorous dissent on the part of one of the participating judges, Justice McAllister, now serving with the Sixth Circuit Court of Appeals in Cincinnati. In this dissent he was joined by another judge, Justice Bushnell. The *Chrysler* case aroused a great deal of criticism because of its essential unfairness. The present Court held the doctrine established therein in so little esteem that even one of the dissenting judges was constrained to remark:

> "Were this a matter of first impression, I should find myself in agreement with Mr. Justice Edwards' interpretation of the word 'establishment.'" (72)

In view of the above, we contend that since petitioner had failed to avail itself of the opportunity to raise the constitutional issues in the trial court as required by Michigan practice, it should be precluded from raising them before this court.

2. The Michigan decision was based upon adequate non-Federal grounds.

The Court below ruled as a matter of law that the functional integration of a company's manufacturing plants located in Michigan and several other states does not make them a single "establishment" within the meaning of the Michigan employment security act (37). Ford had argued that the term "establishment" was intended by the legislature to include all the plants of Ford wherever located because they are "functionally integrated." This argument it claimed was supported by *Chrysler v. Smith, supra.* The Court rejected this contention. It overruled *Chrysler v. Smith* to the extent that it made functional integration the basic test in determining the extent of "the establishment" as used in the Michigan employment security act. By so ruling, it precluded the strike at the Canton, Ohio plant from consideration in determining the disqualification of the claimants herein, as provided by the Michigan employment security act in subsections 2, 3, and 4 of section 29(1)(b).

It is thus clear that what the lower Court did here was to construe a statute passed by the legislature of its state. In so doing it abandoned a former doctrine which it had advanced of its own accord in *Chrysler v. Smith.*

The decision was therefore based solely on adequate state grounds.

This Court has ruled that it will not review a state court decision where independent and adequate non-federal grounds of decision appear. See *Herb v. Pitcairn,* 324 U.S. 117, 125-126, where it was stated:

"This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds * * *. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they inaccurately adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we correct its views of federal laws, our review could amount to nothing more than an advisory opinion."

III

Appellant claims that this Court should assume jurisdiction in this case because substantial federal issues are involved. Its claim with reference to these issues may be summarized as follows:

1. Appellant is deprived of the equal protection of the laws because "the classification of employers, for the purpose of disqualification for unemployment benefits of employees whose stoppage of work was due to a labor dispute in which they were directly involved, on the basis of whether such employer's functionally integrated operations were all at one location or at different locations, is arbitrary and capricious and therefore invalid under the Equal Protection Clause" (19).

2. The statute, as interpreted, infringes the Commerce Clause by imposing an undue burden upon interstate

commerce, where, as here, the labor dispute occurs in a plant outside the state. (20)

In *Lawrence Baking Co. v. Unemp. C.C. supra,* the Michigan Supreme Court disposed of claims similar to those raised hereunder in the following language:

> "Plaintiff's argument is based upon the premise that the payment of compensation to employees on strike is a penalty upon the employer, because its rate of contribution to the unemployment fund will thereby be increased. The public purpose of the unemployment compensation law is to alleviate the distress of unemployment, and the payment of benefits is not conditioned upon the merits of the labor dispute causing unemployment. Likewise, the required contribution of the employer to the unemployment compensation fund is not determined upon the basis of the merits of the dispute. The increase in the amount of the employer's contribution to the fund because of its experience record of payments to employees is not in any sense a penalty. By the unemployment compensation act, the legislature provided a method of determining the employer's contribution to the compensation fund, and it did not see fit to base the amount of such contribution upon the merits of a labor dispute or upon the right or wrongdoing of the employer in connection with such dispute. Such legislative enactment is presumed to be constitutional unless the contrary clearly appears. In the case of Cady v. City of Detroit, 289 Mich. 499, 505, we said:
>
> " 'A statute will be presumed to be constitutional by the courts unless the contrary clearly appears; and in case of doubt every possible presumption not clearly inconsistent with the language and the subject matter is to be made in favor of the constitutionality

> of legislation. * * * Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.' "

The present decision, we believe, presents a much fairer interpretation of the meaning of the term "establishment" than did *Chrysler*. It protects an unfortunate claimant who has been laid off through no fault of his own from being denied unemployment benefits because of circumstances beyond his control. At the same time it protects the employer from being made to pay exorbitant sums because of strikes, by retaining the disqualification provided for in subsections 2, 3, and 4 of section 29(1)(b) of the act. These provide that if a claimant is directly interested in, or involved in a labor dispute in the establishment in which he was last employed, he is disqualified from receiving benefits under the act. Furthermore, the present decision does not eliminate the factor of "functional integration" from being taken into consideration in the determination of what constitutes an "establishment" under the act. The present decision still retains this test as a factor, but other additional tests are set forth in Justice Edwards' opinion for determining what constitutes an "establishment" under the act (44-49).

In view of these observations, we contend that the present decision far from setting up arbitrary classifications provides for much more equitable and fair tests for determining disqualifications of claimants. It is more in harmony with the humanitarian purposes of the act as set forth in *Lawrence*.

Appellant's attempt to raise the issue of interstate commerce, we believe, is based chiefly upon its fear that "organized employees engaged in a common labor dispute are thereby enabled to finance such a dispute against a multiplant employer out of funds to which the employer must, as a result, pay higher contributions, by purposely striking any one of the key plants located outside the state of Michigan whose unemployment is due to a stoppage of work by reason of the strike at the key plant outside the state" (21).

The Supreme Court of Michigan foresaw this contingency and laid down the following policy to protect against its occurrence in *Lawrence Baking Co. v. Unempl. C.C.*, *supra*, p 213:

> "All interested parties who are involved in a claim for unemployment compensation • • • must be dealt with on an impartial basis. The unemployment compensation fund should never be used to finance claimants who are directly involved in a labor dispute, nor should it ever be denied to claimants who are legally entitled to receive benefits. • • • None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike. The State of Michigan, in so far as this act is concerned, must remain neutral in all industrial controversies."

This still continues to be the avowed policy of the Michigan courts.

CONCLUSION

For the above reasons, we respectfully urge that this Court deny jurisdiction in this case by granting the motion to dismiss.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER, 1958

No. 831

FORD MOTOR COMPANY,
Defendant and Appellant,

—against—

ALEXANDER PARK, ET AL.,
Plaintiffs and Appellees,

THOMAS M. KAVANAGH, Attorney General,
Intervenor and Appellee,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

FORD MOTOR COMPANY,
Defendant and Appellant,

—against—

JOHN L. DORSEY, ET AL.,
Plaintiffs and Appellees,

THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS

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Supreme Court of the United States

OCTOBER, 1958

FORD MOTOR COMPANY,
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—against—

ALEXANDER PARK, *et al.*,
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THOMAS M. KAVANAGH, Attorney General,
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JOHN L. DORSEY, *et al.*,
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THE APPEAL BOARD OF MICHIGAN EMPLOYMENT SECURITY COMMISSION and MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Defendants and Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS

Statement

The issue before this Court is whether the construction by the Sureme Court of Michigan of the labor dispute

section of the State unemployment compensation statute created an invidious classification of employers without a rational basis, which renders the taxing provisions of the statute invalid under the Equal Protection and Commerce Clauses of the Federal constitution.

In their motion to dismiss (referred to "MD"), the Appellees do not discuss this issue. Instead, they "restate what appellees believe to be the only possible Federal question raised", (MD p. 5) as follows:

> "May the State of Michigan allow unemployment benefits without disqualification to *persons unemployed through no fault of their own* when their *involuntary* unemployment at plants of the Ford Motor Company in Detroit, Michigan results from a *strike* in a Canton, Ohio, Ford plant?" (Emphasis added)*

Appellees' "re-statement" thus attempts to divert attention away from the disqualification provision—Section 29—which is the section at issue in these cases. By use of the expressions "involuntary unemployment" and "persons unemployed through no fault of their own", Appellees suggest that the case instead arises under the power of the state to pay benefits to those whose unemployment is "involuntary" within the import of Section 2.

In this posture, Appellees' "re-statement" amounts to an erroneous statement of the facts inasmuch as all claimants here were found to have been "directly involved" in the labor dispute. On the facts in this case, the issue cannot be stated in terms which characterize claimants as "persons unemployed through no fault of their own".

It was found as a fact that all claimants in these cases were "directly involved" in the labor dispute which caused

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*The Intervenor, on page 2 of his Brief (referred to as "I. Br."), adopts Appellees argument.

their unemployment. See Appellant's statement of the case on pages 8 to 13 of the Jurisdictional Statement (referred as to "Juris. St.").

The finding that claimants were so "directly involved" was left undisturbed by the State Supreme Court.

Neither the Appellees, in their Motion to Dismiss, nor the Intervenor take issue with any statement of fact in Appellant's presentation of the case as set forth on pages 8 to 13 of the Jurisdictional Statement.

I. THE FEDERAL QUESTIONS

Appellees contend that no substantial Federal question is presented. The Intervenor adopts Appellees' argument (I. Br. p. 2).

A. The Equal Protection Clause

Appellees' contentions under this heading (MD, pp. 8-10) appear to be that (1) the validity of the Act has already been sustained; and (2) the "classification here involved" is not "invidious or palpably arbitrary" because other states have similar statutes containing labor dispute disqualification provisions involving a classification which hinges upon whether or not the labor dispute occurs at a particular "physical location".

(1) The validity of the statute as construed below presents a new Federal question of substance.

Appellees contend (MD, p. 9) that the "instant case is not the first time that the cry of 'equal protection' has been raised, without success, before this Court. *Lawrence Baking Company* v. *U. C. C.* 308 Mich. 198, 13 N. W. 2d

260, 154 ALR 660 (1944), in which petition for writ of certiorari was denied by the Supreme Court of the United States, October 9, 1944, 323 U. S. 738, * * *"

The short answer to the Appellees' contention is that the *Lawrence* case could not possibly have dealt with the "classification here involved" or the Federal questions here presented, because the "classification" here involved arose for the first time by reason of the unexpected overruling of the *Chrysler* case by the decision below. The *Lawrence* case arose in 1944 while the "functional integration" doctrine of the *Chrysler* case [*Chrysler Corporation* v. *Smith*, 297 Mich. 438, 298 N. W. 87 (1941)] was still the law of Michigan.

The Federal question in the *Lawrence* case arising under the Equal Protection clause was based on the construction of Section 29 by the Supreme Court of Michigan which, it was contended, resulted in a "discrimination between employers by classifying them on the basis of (1) those who elected to stop work and close down and (2) those who do not elect to stop work or close down during a strike" (13 N. W. 2d p. 264). The State Supreme Court pointed out, however, that the legislature had to draw the line somewhere, and that the distinction drawn between a "stoppage of work" and a continuation of operations was reasonable and did not impinge upon the policy of the State to maintain neutrality in a labor dispute.

No such classification is here involved because there was a "stoppage of work" in the Michigan plants where claimants were employed. Moreover, such "stoppage of work" was not at Appellant's voluntary election, but was instead forced upon Appellant by reason of the strategically called strike at the Canton plant which brought pressure on Appellant by cutting off the flow of parts necessary for the continuation of operations in the Michigan plants. The stoppage of work here involved was thus not within the

category of voluntary "election" by the employer which was the crux of the classification ruled on in the *Lawrence* case.

Moreover, the *Lawrence* case did not reach the kind of classification here presented which is entirely different (Juris. St., pp. 7, 15, 19). The classification resulting from the decision below is arbitrary and capricious in that it discriminates between (1) an employer whose entire operations are at a single location, and (2) an employer whose functionally integrated operations are in two or more plants located at different places in Michigan or in Michigan and other states. No such question was reached in any of the cases cited by Appellees (MD, p. 10).*

In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495 (1937) (MD, p. 10), the challenge was directed to *exclusion* from the Act of employers of less than eight, and to the *exemption* of particular employers. The Court held (301 U. S. at 511) that administrative convenience and expense were alone sufficient justification for the exclusion of small employers, pointing out that a State was not bound to assume the administrative cost of taxing employers having only a single employee. The Court pointed out also that the character of the exemptions—charitable institutions, public authority, and employers of agricultural laborers, domestic servants, etc.,—was such as to imply that the State had chosen, as the object of its statute, labor employed in the process of industrial production and distribution; and that sound reasons for such selections readily suggest themselves (p. 512). No question involving such *exclusions* and *exemptions* from the Act is here presented.

Lower Vein Coal Co. v. *Industrial Board of Indiana*, 255 U. S. 144 (1921) (Compulsory inclusion of coal mining, a hazardous employment, within Workmen's Compensation law); *Ward & Gow* v. *Krinsky*, 259 U. S. 503 (1922) (extension of category of hazardous employment covered by Workmen's Compensation law).

The discrimination here is among the employers *included* within the Act. As pointed out in the Jurisdictional Statement (pages 6, 9, 14-24), the classification is one which is not only arbitrary and without rational basis, but also one which, by payment of unemployment benefits to claimants found to be "directly involved" in the labor dispute with consequent increased tax rates on their employer, involves the use of unemployment benefits to finance a labor dispute in contravention of the policy of the statute to maintain neutrality.

Appellees' condemnation of Appellant's quotation from *Allied Stores of Ohio* v. *Bowers*, 3L. ed. 2d 480 (1959) is frivolous. The *Allied Stores* case dealt with the policy of a state to encourage operations within the state by non-residents by granting to them certain tax advantages not available to residents engaged in similar operations. Appellees deprecate, as "culling out words of comfort from a portion of that decision" (MD, p. 8), the quotation (by Appellants on page 18 of the Jurisdictional Statement) of the "rule" that the "State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary". Appellees then set forth "the language which follows immediately after the quoted statement" with the assertion that it is this language "which lays down the rule of the [Allied Stores] case". But it is evident that the language on which Appellees rely was employed by the Court in its demonstration that the particular classification in the *Allied Stores* case did rest upon a rational basis in view of the policy of the state to encourage non-residents. Being thus addressed to a specific situation, "the language which follows immediately" after the statement by the Court of the general "rule" cannot be availed of by Appellees as demonstrating that the wholly different, invidious and palpably arbitrary classification here involved, which in

effect penalizes non-residents as well as residents, has any rational basis.

(2) The statutes in other states are irrelevant as a matter of law and immaterial in fact.

Appellees' second contention appears to be (MD, p. 11) that the classification made by the construction of the Michigan statute by the State Supreme Court below is not "invidious or palpably arbitrary" for the reason that statutes in other states follow "a similar method of classification", namely whether or not the "labor dispute" occurs at a particular "physical location", such as "establishment". There are two answers to this contention.

First, the statutes in other states, regardless of their provisions, are irrelevant as a matter of law to the issues in this case. Only the Michigan statute, as construed below, is involved here. The issue here is whether that statute, as so construed and applied to Appellant in the circumstances of this case, is valid under the Federal Constitution.

Second, even if we assume, as Appellees assert (MD, p. 11), that the "classification" in thirty-nine states and the District of Columbia "hinges upon whether or not the labor dispute in question occurs in the 'factory, establishment, or other premises'," and that the Michigan statute contained a similar provision*, that would all be immaterial and lacking in probative value insofar as Appellees' contentions here are concerned.

The problem here is not a necessary result of any such provision in the Michigan statute but instead was created by the construction given to the statute by the Supreme

*The provisions of Section 29 of the Michigan statute are, however, quite different. See Jurisdictional Statement, page 4. See, also, legislative history of Section 29 as set forth in the *Lawrence* case (13 NW 2d at pp. 261-2).

Court of Michigan. For example, the Unemployment Compensation Act of the Territory of Alaska contained a labor dispute provision providing for disqualification of a claimant where unemployment is due to a labor dispute in "the factory, establishment or other premises"—exactly the wording postulated by Appellees. But in *Unemployment Commission* v. *Aragon*, 329 U. S. 143 (1946), this Court ruled that the "labor dispute" was nevertheless "at the factory, establishment or other premises", although there was no strike, and although the negotiations were carried on at places far removed from the work site. In the *Aragon* case, this Court pointed out (p. 150) that the ruling was supported by the context in which "labor dispute" was used in the Social Security Act, as well as by the definition of "labor dispute" in the Norris-LaGuardia Act (29 USCA § 101), and in the National Labor Relations Act (29 USCA § 152[9]), all of which make clear that "labor dispute" is not limited to "strike".

As pointed out in Appellant's Application for Rehearing in the State Supreme Court (Appendix to Jurisdictional Statement, pages 51a-53a), the arbitrary classification here can arise only if a Court, in construing the Act, arbitrarily limits the term "labor dispute" to "strike". The Court below did just that. For the purposes at hand, the construction by that Court "become[s] a part of the statute[s]." *Wheeling Steel Corp.* v. *Glander*, 337 US 562, 566 (1949). Therefore, Appellees' attempt to equate words in the Michigan statute with words in statutes in other states is futile. Any asserted similarity in wording occurring in the Michigan statute, as written, and in the statutes of other states is an immaterial fact because of the gloss placed upon the Michigan statute by the Court below.

B. The Commerce Clause

The first contention of Appellees with reference to the Commerce Clause appears to be (MD, pp. 11-12) that

there is no "undue burden" on commerce for the asserted reason that, since benefits under the Michigan statute are paid out of a "pooled fund",* the rate of tax to a particular employer "*may* be, but not necessarily is" (emphasis by Appellees, MD, p. 12) affected by the payment of benefits in any particular case; and that there is "nothing in the record concerning what, if any, effect the payment of the claims here in question will have upon the tax rate of Appellant" (MD, p. 12).

There are two answers to this first contention. First, the testimony in the record in this case shows (R. 659b) that the benefits in question on this appeal in fact would have a direct bearing upon Appellant's tax rate. Second, the extensive quotation from the *Lawrence* case, appearing on page 11 of the Brief of the Intervenor, makes it clear that, under Michigan law, the payment of benefits are taken, for the purpose of presentation of a constitutional point, as necessarily resulting in an increase in the rate of contribution by the employer to the unemployment fund from which benefits are payable. The *Lawrence* case thus establishes that the impact of the taxing provisions gives to an employer a standing to present constitutional questions arising out of the payment of benefits pursuant to an interpretation by the court of Section 29.

The second contention of Appellees under the Commerce Clause appears to be (MD, p. 13) that *if* the increase in the tax rate would *not* be an "undue burden" had the strike occurred in a Michigan plant, then the "occurrence of the strike in Ohio creates no greater impact". In other words, if the increase in tax on employers selected according t

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*The "pooled fund" contention is specious because under Section 20 of the statute the benefits are charged against the individual "employers rating account." (See Juris. St. pp. 5, 6.) Thus, the payment out of a "pooled fund" is a mere matter of administrative convenience.

the classification would not be an arbitrary discrimination against them under the Equal Protection Clause, then it should follow that such increase in tax would not be an undue burden upon commerce. But this contention begs the question. It is no answer to say that the "undue burden" upon interstate commerce is also a burden upon local commerce. Manifestly, an "undue burden" upon interstate commerce cannot be justified by the imposition of a like "undue burden" upon local commerce. *Dean Milk Company* v. *City of Madison, Wisconsin,* 340 U. S. 349 (1951).

As pointed out in the Jurisdictional Statement, pages 16-24, since the classification here results in an arbitrary discrimination in violation of the Equal Protection Clause, the discrimination is therefore an undue burden upon Commerce when applied to Appellant in the circumstances of this case where the strike occurred at its plant in Canton, Ohio, in the course of a labor dispute in which the Michigan claimants were directly involved.

The third contention of Appellees under the Commerce Clause appears to be (MD, p. 14) based on an assumption that no "constitutional inhibition" would prevent the Michigan legislature, if it chose, from amending the labor dispute disqualification section so as to pay benefits "to *strikers* while they are on strike". (Emphasis by Appellees) On this premise, Appellees contend in effect that the State of Michigan is therefore free from any "constitutional inhibition" in the making of the invidious and palpably arbitrary classification among employers here involved because such arbitrary classification results only in a payment of benefits to claimants found to have been directly involved in the labor dispute which caused their unemployment—a limited result which falls far short of the asserted plenary power of a state to pay benefits to strikers on any basis.

But the assumption that a state has plenary power free from any inhibition under the Commerce Clause to adopt a

policy of paying benefits to strikers "while they are on strike" is a proposition which is not established. Appellees apparently rely (MD pp. 13-14) on a provision in the Social Security Act which imposes only the specific requirement that benefits shall not be denied by a state to any otherwise eligible individual for refusing to accept new work if the position offered is vacant due directly to "a strike, lockout, or other labor dispute". The imposition of this single limitation does not by implication authorize a state to adopt a policy of intervention in labor disputes by the financing of strikes through the payment of unemployment benefits taxed to the employer on an arbitrary and discriminatory basis. Congress itself has largely preempted the field of labor disputes in the passage of the National Labor Relations Act which embodies a Federal policy that public authority should maintain neutrality in labor disputes affecting commerce. In this connection it may be pointed out that the existing Federal legislation has by no means exhausted the full sweep of legislative power over industrial relations, given to the Congress by the Commerce Clause, and there remains a broad area of regulation which the state may not enter without potential conflict with Federal authority, *Cf., Building Trades Council* v. *Garmon,* United States Supreme Court, No. 66, Oct. Term 1958, April 20, 1959.

Moreover, even if Appellees' premise were accepted *arguendo,* the argument itself is analogous to the exploded doctrine that, because a state may totally prohibit certain action, it may permit such action upon unconstitutional conditions. For example, it is now firmly established that, while a state may refuse to admit foreign corporations to do business within its borders, and may arbitrarily exclude them, a foreign corporation once admitted to the state is entitled to equal protection under the laws applicable to domestic corporations. *Wheeling Steel Corp.* v. *Glander,* 337 U. S. 562, 571-2 (1949). Similarly, assuming *argu-*

endo the Appellees' premise that a state is free to decide whether to remain neutral or to participate in labor disputes, once a state determines to intervene in a labor dispute by the payment of benefits "to strikers while they are on strike", constitutional inhibitions would then require that the state action must be free from arbitrary discriminations among employers.

For the same reason, there is no merit in the Appellees' suggestion (MD, p. 14-15) that, since a state may draw a line between the plant of an employer, and the plant of its outside supplier, a state may therefore adopt the invidious and palpably arbitrary classification of employers resulting from the construction given below to the statute by the State Supreme Court. It does not follow that because a state may draw a line between separate employment units of *different* employers, where one is dependent upon the goods supplied by the other, that a state may draw a line between functionally integrated plants of a single employer where the result is to discriminate between employers otherwise similarly situated.

C. The Concept of "Fair Play"

With reference to the contention of Appellees under the heading "The Concept of 'Fair Play'" (MD, pp. 15-16), it should be pointed out that Chief Justice Stone, in the majority opinion in *International Shoe Company* v. *State of Washington*, 326 U. S. 310 (1945) at p. 320, referred to the necessity for sufficient contacts or ties with the state of the forum to make it "reasonable and just, according to our traditional conception of fair play and substantial justice" to render a foreign corporation amenable to suit under the due process clause. The concepts of "fair play and substantial justice" and "reasonableness" are thus an integral part of our constitutional law. The Appellees have

quoted from the separate opinion of Mr. Justice Black who was of the view that less emphasis should be placed on such concepts.

Moreover, it is important to note that the concepts of "fair play and substantial justice" and "reasonableness" enter importantly into the policy of the state to remain neutral in labor controversies. In the *Lawrence* case, the Supreme Court of Michigan (13 N. W. 2d, p. 265) pointed out that the policy of the State, as appears from the statute, is to grant benefits only in conformity with such neutrality. In support of this policy, the Court in the *Lawrence* case quoted from the opinion of Justice Wiest in *Chrysler Corp. v. Smith, 297 Mich.* 438 at pp. 446, 447, 298 N. W. 87 at p. 90—the decision overruled by the opinion below in the present case—where he approved of the statement of policy by the Appeal Board in the *Chrysler* case:

> "* * * All interested parties who are involved in a claim for unemployment compensation * * * must be dealt with on an impartial basis. The unemployment compensation fund should never be used to finance claimants who are directly involved in a labor dispute, nor should it ever be denied to claimants who are legally entitled to receive benefits. * * * None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike. The State of Michigan, insofar as this Act is concerned, must remain neutral in all industrial controversies."

Thus, the use in the present case of unemployment benefits (resulting in increased taxes on the employer) to finance a strike by the payment of benefits to claimants found in fact to be directly involved in the labor dispute, is contrary to the policy of "fair play" of the State as stated in the *Chrysler* case, and as confirmed by the *Lawrence* case.

Despite the overruling of the *Chrysler* precedent by the Court below in this case, Intervenor nevertheless quoted in full from the *Lawrence* case the foregoing excerpt from the *Chrysler* case, and affirmed that (I. Br. p. 13):

> "This still continues to be the avowed policy of the Michigan Courts."

II. TIMELY PRESENTATION OF THE FEDERAL QUESTIONS

The whole line of Appellees' (MD, pp. 16-18) and Intervenor's (I. Br. pp. 3-8) contentions and arguments under this heading is based on the assumption that Appellant reasonably could and should have anticipated the decision of the Supreme Court of Michigan below from the inception of this litigation.

On the basis of this assumption it is urged, by implication, that Appellant should have raised the Federal questions at the inception of these proceedings when Appellees presented their claims to the Michigan Employment Security Commission, reasserted the Federal questions when Appellees appealed to the Circuit Court from a series of administrative rulings in Appellants' favor, and reasserted the Federal questions upon Appellees' appeal to the Supreme Court of Michigan (MD, p. 16; I. Br. pp. 3, 6). From the foregoing assumption and contentions it is argued that, since Appellant failed to present the Federal question in the lower court, the Supreme Court of Michigan, under state procedural law, would not consider the constitutional issues (MD, pp. 16-17; I. Br. 4) and therefore this Court is without jurisdiction because the State Supreme Court did not pass upon the Federal questions pre-

sented by Appellant's Application for Rehearing in the Supreme Court of Michigan.*

The assumption, and the related contentions and arguments, are irrelevant because all are based on the false premise that the Federal questions here presented arose in the trial court (MD, p. 17; I. Br. p. 6).

In fact, the Federal questions here presented arose for the first time by reason of the decision of the Supreme Court of Michigan below which created an invidious and palpably arbitrary classification of employers which did not theretofore exist.

As pointed out in the Jurisdictional Statement (p. 14), no Federal right or claim of right of Appellant had been infringed prior to the decision of the State Supreme Court below. The objection upon Federal grounds to such infringement of appellant's rights could not have been made until after that decision. The application for rehearing therefore presented the first opportunity for raising such Federal questions. Presentation of the Federal questions was therefore timely.

Moreover, (1) the basic assumption by Appellees and Intervenor is false: the decision below, and consequent arbitrary classification thereby created, could not have been anticipated; (2) the contentions as to state procedural law are unsound; and (3) jurisdiction of this Court is not affected by summary denial by the Supreme Court of Michigan of Appellant's Application for Rehearing without reference to the Federal questions.

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*But in opposing Appellant's Application for Rehearing below, Appellees' contention was that the Application for Rehearing presented nothing new, and that the Supreme Court of Michigan *did* give "due consideration of the Alleged Constitutional issues" briefed below by Appellant (See Appendix to Jurisdictional Statement, pp. 57a-58a).

(1) The arbitrary classification of employers created by the decision below could not have been anticipated.

As pointed out in the Application for Rehearing in the Supreme Court of Michigan (Appendix to Jurisdictional Statement) (pp. 48a-50a), the invidious and palpably arbitrary classification here complained of did not result from a mere overruling of the *Chrysler* precedent. Rather, it was created by the combined effect of the overruling by the decision below of established Michigan law on three separate and distinct points in the interpretation of Section 29(1)(b) and the substitution in lieu thereof of the following series of changes made expressly, or by necessary implication, in the construction of the Section: (a) The "labor dispute" was required to be "in the establishment" of employment; (b) The concept of "establishment" was changed by limiting it to the physical premises of the employer at a single location; and (c) The concept of "labor dispute" was changed by limiting it to "strike".

None of these changes could reasonably have been anticipated by Appellant. Certainly it would have been impossible to have anticipated the impact of the combined effect of all three of this series of changes.

(a) An amendment of the statute in 1941 shifted the connotation of a physical location from "labor dispute" to "stoppage of work." As pointed out in the *Lawrence* case (13 N. W. 2d p. 262), as initially enacted in 1936 the Michigan disqualification provision originally had referred to unemployment *"due to a labor dispute* * * * actively in progress *in the establishment"*. In that context it would have been open for Appellees to advance, as a premise, the proposition that the classification hinged upon whether or not the "labor dispute" occurred "in the establishment". But that was changed in 1941. The 1941 amendment changed the emphasis on physical location "in the establishment" from

"labor dispute" to "stoppage of work". As amended, the section refers to unemployment *"due to a stoppage of work* existing because of a labor dispute in *the establishment"*. (Italics by the Court). The *Lawrence* case therefore held that (p. 264) the statute, as amended, meant that the "stoppage of work" must be in the "establishment". By implication the import of this ruling in the *Lawrence* case was that the words "existing because of a labor dispute" were intended to characterize the nature of the work stoppage (in the establishment) and were not intended to limit the application of Section 29 to situations where the labor dispute is in the "establishment" where claimant was employed. This aspect of the *Lawrence* case was, by necessary implication, overruled by the decision below.

(b) The concept of "establishment" under the *Chrysler* precedent included all functionally integrated operations of the employer whether or not located at a single place. The Court below specifically overruled this aspect of the *Chrysler* case and held, in effect, that "establishment" was limited to a single physical location (see Juris. St. pp. 15-16; Appendix to Juris. St. pp. 38a, 53a, 54a). Both Appellees (MD, pp. 17, 18) and Intervenor (I. Br. pp. 6, 7, 8) assert that this should have been foreseen, even at the trial court stage of this litigation (I. Br. pp. 6, 8)—notwithstanding the obvious fact that *Chrysler* was binding upon the lower court! That Appellant could not reasonably have foreseen the overruling of the *Chrysler* precedent below is obvious from the following admission appearing on page 8 of the Intervenor's Brief to the effect that for 17 years *Chrysler* had been followed without challenge prior to the present decision:

> "It is true the 'functional integration' doctrine propounded in *Chrysler* had been the law in Michigan, for a period of 17 years. But the doctrine had *not* been challenged *prior* to the present *decision."* (Emphasis added).

(c) The change in interpretation of "labor dispute" from a controversy over wages to a "strike" could not have been foreseen. In the *Chrysler* case (298 N. W. at 95) the Supreme Court of Michigan had ruled that a claimant is "directly interested" in a "labor dispute" when his "wages, hours, or conditions of work will be affected by the outcome of the dispute". This concept of labor dispute was in accordance with the definition of labor dispute which had already been codified in 1932 in the Norris-LaGuardia Act [29 USCA § 113(c)], and in the National Labor Relations Act in 1935 [49 Stat. 449, 450 29 USCA § 152(9)], *prior* to initial passage of the Michigan Unemployment Compensation Act in 1936.

And the decision below, in effect limiting "labor dispute" to strike, is even more surprising in view of the fact that the Michigan statute purported to be passed pursuant to sub-section 5 of Sec. 903(a) of the Social Security Act (49 Stat. 640, 1935) which requires that the state act contain a provision (quoted by Appellees, MD, pp. 13-14) which uses the term "labor dispute" in a context precluding an interpretation limiting it to "strike". See, in this connection, the analysis by Chief Justice Vinson in *Unemployment Commission* v. *Aragon*, 329 U. S. 143, 150 (1946). It could not have been foreseen that the decision below would not at least follow the *Aragon* case on the interpretation of "labor dispute".

The foregoing considerations emphasize the soundness of the ground on which Appellant (Juris. St., p. 16) distinguished *Herndon* v. *Georgia*, 295 U. S. 441 (1935), on which Appellees (MD, p. 18) and Intervenor (I. Br. p. 6) both rely.* In the *Herndon* case, the appellant in this Court

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*The lack of substance in Appellees' criticism of Appellant's quotation from the *Herndon* case (MD, p. 18) is made evident by a reading of the more extensive quotation by Intervenor from the *Herndon* case on page 6 of his Brief.

(also appellant below) contended (p. 443-4) that the "question respecting the validity of the statute as applied by the lower court first arose from its unanticipated act in giving to the statute a new construction which threatened rights under the Constitution." The Court recognized the validity of the principle of jurisdiction thus invoked by appellant, but pointed out that the ruling challenged had merely followed a *prior* decision of the State Supreme Court which had been handed down "several months" *before* the action of the trial court. It was accordingly held that appellant could not "plead ignorance" of the *prior* decision of the State Supreme Court and was therefore bound to anticipate the probability of a similar ruling by the trial court in his own case.

That is not the situation here. Indeed, both Appellees and Intervenor concede that by the decision below the State Supreme Court for the first time departed from the *Chrysler* doctrine. Moreover, the Appellant here was also surprised, not only by the overruling of *Chrysler*, but by changes in the law including the novel interpretation of "labor dispute" which, as pointed out above, could not possibly have been anticipated.

(2) Appellant was not required, as appellee below, to anticipate constitutional issues.

The contention by Appellees (MD, pp. 16, 17) and Intervenor (I. Br. pp. 4-8) that the Appellant here was required to anticipate potential constitutional issues at each stage of this litigation is unsound under both State and Federal procedural law.

The Appellant here had been the prevailing party throughout from the initial administrative ruling to the decision by the Circuit Court of Wayne County. *Claimants* were the *appellants* in the Supreme Court of Michigan.

In this posture, the Appellant here, as *Appellee in the State Supreme Court*, under well established principles of law, was free to urge before the *State Supreme Court* any proposition of law in support of the decision of the Circuit Court in its favor regardless of whether or not such question of law had been raised in the Circuit Court. In *Menendez* v. *City of Detroit*, 337 Mich. 476, 60 NW 2d 319 (1953), the Supreme Court of Michigan said (60 NW 2d at p. 323):

> "* * * These [Michigan] cases hold * * * that an appellee need not take a cross appeal in order to urge, in support of relief afforded him below, reasons other than those adopted by or those rejected by the lower court."

As said in *Marshall* v. *Pletz*, 317 U. S. 383, 390 (1943):

> "Although the point is raised [by respondent] for the first time in this court, if we find it meritorious we may consider it as supporting the judgment below."

To the same effect, see *Ormsby* v. *Barr*, 22 Mich. 80 (1870); *Jaffke* v. *Dunham*, 352 U. S. 280, 281 (1956); *U. S.* v. *American Ry. Exp. Co.*, 265 U. S. 425, 435-6 (1924).

Accordingly, the Appellant here, as the Appellee in both the Circuit Court and the State Supreme Court, was not required to, but was free to, anticipate in either of those courts any point of constitutional law in support of the decisions below in its favor. Vigorous anticipation of any constitutional point in the Circuit Court might have been interpreted as a sign of weakness on the fact issues. In any event, it could have served no useful purpose because *Chrysler* and *Lawrence* were binding on that court. But the situation was different on appeal by the Appellees here to the Supreme Court of Michigan because that Court had

the power to overrule its own precedents however long standing and well established.

The Appellant here, as Appellee below, out of an abundance of caution was free to and did call to the State Supreme Court's attention certain considerations of law under the Commerce, Equal Protection, and Due Process Clauses of the Federal constitution. These not only were in support of the judgment of the Circuit Court in Appellants favor but also inhibited the Supreme Court of Michigan from any construction that would result in a greater tax on the privilege of employment in the State than would have been imposed if the Appellant's organization and the labor dispute had not extended across state lines, but instead had been wholly within the State. See Portion of Ford Motor Company's Brief in State Supreme Court Dealing with Federal Questions, Appendix to Jurisdictional Statement, pages 29a-37a.

The invidious and palpably arbitrary classification of employers here complained of did not however result from a mere refusal of the Court below to apply existing precedents to organizations and labor disputes extending across state lines. It resulted, instead, from the combined effect of the overruling by the decision below of established Michigan law on three separate and distinct points. As pointed under II(1) above, Appellant did not and could not have anticipated any such result. The precise constitutional issues that arose for the first time by reason of the decision below were duly presented in the Application for Recording, (Appendix to Juris. St. pp. 38a-56a).

It is clear therefore that Appellant had been diligent in the raising of the Federal questions. Indeed, in the circumstances of this case, it could not possibly have done more.

The cases relied on by Appellees (MD, pp. 16-17), and Intervenor (I. Br., p. 4), are clearly distinguishable. In each of these cases: *City of Dearborn* v. *Village of Allen*

Park, 348 Mich. 449, 83 N. W. 2d 447 (1957); *Stembridge* v. *State of Georgia*, 343 U. S. 541 (1952); *Bailey* v. *Anderson*, 326 U. S. 203, 206-7 (1945); *Mutual Life Ins. Co.* v. *McGrew*, 188 U. S. 291, 309, 313 (1903); *Herndon* v. *Georgia*, 295 U. S. 441 (1935), the *appellant below* was the one attempting on appeal to the United States Supreme Court to obtain reversal of the decision below against him as erroneous on a ground not presented by him below.*

(3) The Jurisdiction of this Court is not affected by the denial by the Supreme Court of Michigan of Appellant's Application for Rehearing below.

Since the Federal questions were presented at the first opportunity, the jurisdiction of this Court is not affected by action of the State Supreme Court in summarily denying the Application for Rehearing without reference to the Federal questions. Such Federal questions were necessarily decided in the disposition which the Supreme Court of Michigan made of these cases on rehearing. *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673, 678 (1930);

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*However, even if Appellant had been the appellant below, Appellant would not necessarily have been precluded from reliance on a constitutional point based solely on a question of law. In *Dation* v. *Ford Motor Co.*, 314 Mich. 152, 22 N. W. 2d 252 (1946) the Supreme Court of Michigan considered a constitutional point under the Workmen's Compensation Law raised for the first time by an appellant in that court. The Court, in distinguishing earlier cases following the general rule that a point not raised below will be disregarded, made the following distinction (p. 255):

> "* * * In each of these decisions [applying the general rule], however, the question sought to be raised on appeal involved the determination of issues of fact rather than the constitutionality of a statutory provision directly involved in the controversy.
>
> * * *
>
> "The general rule that a question may not be raised for the first time on appeal to this court is not inflexible. When consideration of a claim sought to be raised is necessary to a proper determination of a case, such rule will not be applied."

Missouri v. *Gehner*, 281 U. S. 313, 320 (1930); *Saunders* v. *Shaw*, 244 U. S. 317, 319 (1917).

III. BASIS OF DECISION BELOW

Appellees (MD, pp. 18-19) and Intervenor (I. Br. pp. 9-10) contend that this Court is without jurisdiction because the decision below was based on an interpretation of a state statute. This, it is asserted, is necessarily an adequate non-federal ground.*

The contention is obviously without substance because it overlooks the fact that, for the purposes of these cases, the construction given by the State Supreme Court to the statute is accepted as and for the act of the legislature. Such construction, for present purposes, becomes a part of the statute. *Allied Stores of Ohio* v. *Bowers*, 3 L. ed. 2d 480 (1959). The statute, thus interpreted and applied, therefore remains within the reach of Federal jurisdiction under Title 28 USCA § 1257 (2) to the same extent as though the legislature had itself specifically set forth that construction in the statute. If it were otherwise, a state court could evade the reach of Federal jurisdiction by the simple device of placing a gloss on the statute sought to be reviewed.

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*The "adequate non-federal basis" decisions cited (MD, p. 19) (I. Br. p. 9) involved no such proposition: *Enterprise Irreg. District* v. *Farmers Mut. Canal Company*, 243 U. S. 157, 163-4 (1917) (decision based on "estoppel *in pais*", a "plainly non-federal" ground); *Herb* v. *Pitcairn*, 324 U. S. 117, 120-124 (1945) (dismissal of action not within jurisdiction of City Court); *Eustis* v. *Bolles*, 150 U. S. 361, 368 (1893) (acceptance of money awarded under "composition act" held under state law to be an estoppel or waiver of right to object to validity of composition act).

CONCLUSION

The Motion to Dismiss should be denied and probable jurisdiction noted in these cases.

Respectfully submitted,

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